Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. 05-1429

IN THE

Supreme Court of the United States

TRAVELERS CASUALTY & SURETY COMPANY OF AMERICA,

Petitioner,

v.

PACIFIC GAS AND ELECTRIC COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED MAY 8, 2006
CERTIORARI GRANTED OCTOBER 6, 2006

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The following opinion, orders, transcript and statutes have been omitted in printing this Joint Appendix because they appear in the appendix of the Petition for a Writ of Certiorari on the following pages:

Memorandum Opinion Of The United States Court Of Appeals For The Ninth Circuit Filed February 7, 2006 ..... 1a

Order Of The United States District Court For The Northern District Of California Dated February 18, 2004 ..... 4a

Order Of The United States Bankruptcy Court For The Northern District Of California, San Francisco Division Dated July 11, 2003 ..... 20a

Transcript Of Proceedings Of The United States Bankruptcy Court For The Northern District Of California, San Francisco Division Dated July 11, 2003 ..... 22a

Relevant Statutes 26a

APPENDIX A — RELEVANT DOCKET ENTRIES

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
(SAN FRANCISCO)
BANKRUPTCY PETITION #: 01-30923

04/06/2001	41	Order Granting Motion For Authority to Pay Pre-Petition Compensation and Benefits by Pacific Gas and Electric Co. (Entered: 04/09/2001)
09/20/2001	2236	Disclosure Statement of Plan of Reorganization Under Chapter 11 of the Bankruptcy Code By Debtor Pacific Gas and Electric Co. and PG&E Corp. (Entered: 09/20/2001)
11/27/2001	3530	Objection By Creditor Travelers Casualty and Surety Co. To [2236-1] Disclosure Statement to Accompany Debtor's Plan of Reorganization dated September 20, 2001 by Pacific Gas and Electric Co. (Entered: 11/30/2001)
12/03/2001	3712	Objection By Creditor Travelers Casualty and Surety Co. To [2236-1] Disclosure Statement of Pacific Gas and Electric Co. (Entered: 12/07/2001)
01/28/2002	4534	Transcript of Hearing Held on January 14, 2001 (Entered: 01/30/2002)

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02/06/2002	4707	Plan Proponents' Summary of and Response By Debtor Pacific Gas and Electric Co. To . . . [references to other objections omitted for purposes of Joint Appendix] Objection by Travelers Casualty and Surety Co., [3712-1] Objection by Travelers Casualty and Surety Co., [3497-1] . . . [additional references omitted] . . . [4707-1] Response by Pacific Gas and Electric Co. (Entered: 02/07/2002)
03/07/2002	5028	Second Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code Filed by Debtor Pacific Gas and Electric Co. (Entered: 03/08/2002)
03/18/2002	5274	Notice of Debtor's Objection and Objection To Claim Numbers: #8869, 9911, 9912 and 11335 of Travelers Casualty and Surety Company of America (Entered: 03/19/2002)
04/19/2002	6053	Chapter 11 Plan Of Reorganization Filed By Debtor Pacific Gas and Electric Corp., Debtor Pacific Gas and Electric Co. (Dated April 19, 2002) (Entered: 04/22/2002)
05/06/2002	6315	Response By Creditor Travelers Casualty and Surety Co. To [5274-1]

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		Claims Objection To Claim Numbers: #8869, 9911, 9912 and 11335 of Travelers Casualty and Surety Company of America by Pacific Gas and Electric Co. (Entered: 05/06/2002)
05/06/2002	6316	Declaration Of Susan M. Camilli filed by Creditor Travelers Casualty and Surety Co. in Support RE: [6315-1] Response To [5274-1] Claims Objection To Claim Numbers: #8869, 9911, 9912 and 11335 of Travelers Casualty and Surety Company of America by Pacific Gas and Electric Co. by Travelers Casualty and Surety Co. (Entered: 05/06/2002)
05/06/2002	6317	Motion by Creditor Travelers Casualty and Surety Co. For Leave to File Enlarged Response to the Debtor's Objection to its Claims that Exceeds Page Limitation (Entered: 05/06/2002)
05/[illegible]002	6318	Declaration Of G. Eric Brustad, Jr. filed by Creditor Travelers Casualty and Surety Co. in Support of [6317-1] Motion For Leave to File Enlarged Response to the Debtor's Objection to its Claims that Exceeds Page Limitation by Travelers Casualty and Surety Co. (Entered: 05/06/2002)

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07/17/2002	8907	Objection By Creditor Travelers Casualty and Surety Co. RE: [6566-1] Chapter 11 Plan by CA Public Utilities Commission, [6053-1] Chapter 11 Plan by Pacific Gas and Electric Co., Pacific Gas and Electric Corp. (Entered: 07/19/2002)
11/08/2002	10974	Stipulation By Creditor Travelers Casualty and Surety Co. and Order Resolving Objections to Claims of Travelers Casualty and Surety Company (Claims #8869, #9911, #9912, and #11335) (Entered: 11/12/2002)
11/13/2002	11029	Notice of Entry of Order RE: [10974-1] Stipulation Order Objections to Claims of Travelers Casualty and Surety Company (Claims #8869, #9911, #9912, and #11335) by Travelers Casualty and Surety Co., [10974-2] Stipulation Order by Travelers Casualty and Surety Co. (Entered: 11/14/2002)
03/07/2003	12324	Notice of Objection and Objection To Amended Claims #8869, 9911, 9912 and 11335 of Travelers Casualty and Surety Co., Filed By Debtor Pacific Gas and Electric Co. (Entered: 03/10/2003)

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05/15/2003	12811	Response Filed by Creditor Travelers Casualty and Surety Co. To RE: related document(s) 12324 Notice of Objection and Objection To Amended Claims #8869, 9911, 9912 and 11335 of Travelers Casualty and Surety Co. (Entered: 05/20/2003)
05/20/2003	12828	Notice of Errata Filed by Creditor Travelers Casualty and Surety Co. Regarding (RE: related document(s) 12811 Response Filed by Creditor Travelers Casualty and Surety Co. To RE: related document(s) 12324 Notice of Objection and Objection By Debtor Pacific Gas and Electric Co. To Amended Claims #8869, 9911, 9912 and 11335 of Travelers Casualty and Surety Co. (Entered: 05/21/2003)
05/20/2003	12829	Declaration of G. Eric Brunstad, Jr. Filed by Creditor Travelers Casualty and Surety Co. in Support of RE: related document(s) 12811 Response Filed by Creditor Travelers Casualty and Surety Co. To (RE: related document(s) 12324 Notice of Objection and Objection Filed By Debtor Pacific Gas and Electric Co. To Amended Claims #8869, 9911, 9912 and 11335 of Travelers Casualty and Surety Co. (Entered: 05/21/2003)

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06/27/2003	13034	Disclosure Statement for Plan of Reorganization Under Chapter 11 of the Bankruptcy Code for Pacific Gas and Electric Company Proposed By Pacific Gas and Electric Company, PG&E Corporation, and the Official Committee of Unsecured Creditors Filed by Debtor Pacific Gas and Electric Co., and Creditor PG&E Corp. (Entered: 07/01/2003)
07/07/2003	13081	Reply Filed by Debtor Pacific Gas and Electric Co. RE: 12811 Response Filed by Creditor Travelers Casualty and Surety Co. To RE: related document(s) 12324 Notice of Objection and Objection To Amended Claims #8869, 9911, 9912 and 11335 of Travelers Casualty and Surety Co. (Entered: 07/09/2003)
07/11/2003	13131	Order Sustaining: 12324 Notice of Objection and Objection Filed By Debtor Pacific Gas and Electric Co. To Amended Claims #8869, 9911, 9912 and 11335 of Travelers Casualty and Surety Co. (Entered: 07/15/2003)
07/11/2003	13133	Hearing Held RE: 12324 Notice of Objection and Objection To Amended Claims #8869, 9911, 9912 and 11335 of Travelers Casualty and Surety Co. (Entered: 07/15/2003)

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07/14/2003	13138	Notice of Entry of Order Filed by Debtor Pacific Gas and Electric Co. RE:13131 Order Sustaining: 12324 Notice of Objection and Objection To Amended Claims #8869, 9911, 9912 and 11335 of Travelers Casualty and Surety Co. (Entered: 07/16/2003)
07/18/2003	13170	Objection Filed by Creditor Travelers Casualty and Surety Co. RE:13034 Disclosure Statement for Plan of Reorganization Under Chapter 11 of the Bankruptcy Code for Pacific Gas and Electric Company Proposed By Pacific Gas and Electric Company, PG&E Corporation, and the Official Committee of Unsecured Creditors (Entered: 07/18/2003)
07/21/2003	13175	Notice of Appeal (USDC# C03-3499-PJH) Filed by Creditor Travelers Casualty and Surety Co. [Receipt Number 30026448, Fee Amount $ 105.00] RE: 13131 Order Sustaining: 12324 Notice of Objection and Objection Filed By Debtor Pacific Gas and Electric Co. To Amended Claims #8869, 9911, 9912 and 11335 of Travelers Casualty and Surety Co.; Appellant Designation due by 7/31/2003; Transmission to District Court due by 8/20/2003 (Entered: 07/21/2003)

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07/21/2003	13176	Notice of Objection Filed by Creditor Travelers Casualty and Surety Co. To Referral of Appeal to the Bankruptcy Appellate Panel (Entered: 07/21/2003)
07/21/2003	13176	Statement of Election to District Court Filed by Creditor Travelers Casualty and Surety Co. RE: 13175 Notice of Appeal, Filed by Creditor Travelers Casualty and Surety Co.; Appellant Designation due by 7/31/2003 (Entered: 07/21/2003)
07/21/2003	13177	Certification of Interested Entities or Persons Filed by Creditor Travelers Casualty and Surety Co. (Entered: 07/21/2003)
07/30/2003	13291	Appellant Designation of Contents For Inclusion in Record On Appeal Filed by Creditor Travelers Casualty and Surety Co. RE: 13175 Notice of Appeal RE: 13131 Order Sustaining: 12324 Notice of Objection and Objection Filed By Debtor Pacific Gas and Electric Co. To Amended Claims #8869, 9911, 9912 and 11335 of Travelers Casualty and Surety Co, 13176 Statement of Election on Appeal filed by Creditor Travelers Casualty and Surety Co. Appellee Designation Due by 8/11/2003 (Entered: 08/04/2003)

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07/30/2003	13292	Statement of Issues on Appeal, Filed by Creditor Travelers Casualty and Surety Co. RE: 13175 Notice of Appeal RE: 13131 Order Sustaining: 12324 Notice of Objection and Objection Filed By Debtor Pacific Gas and Electric Co. To Amended Claims #8869, 9911, 9912 and 11335 of Travelers Casualty and Surety Co. (Entered: 08/04/2003)
07/30/2003	13293	Appellant Designation of Contents For Inclusion in Record On Appeal (Pursuant to Fed. R. Bankr. P. 8006) Filed by Creditor Travelers Casualty and Surety Co. RE: 13175 Notice of Appeal RE: 13131 Order Sustaining: 12324 Notice of Objection and Objection Filed By Debtor Pacific Gas and Electric Co. To Amended Claims #8869, 9911, 9912 and 11335 of Travelers Casualty and Surety Co.; Appellee Designation Due by 8/11/ 2003 (Entered: 08/04/2003)
07/30/2003	13294	Request for Transcript Filed by Creditor Travelers Casualty and Surety Co. RE: 13175 Notice of Appeal RE: 13131 Order Sustaining 12324 Notice of Objection and Objection Filed By Debtor Pacific Gas and Electric Co. To Amended Claims #8869, 9911, 9912

		and 11335 of Travelers Casualty and Surety Co.; Transcript Due by 8/29/2003 (Entered: 08/04/2003)
07/31/2003	13298	Plan of Reorganization Filed by Debtor Pacific Gas and Electric Co., Creditor Pacific Gas and Electric Corp. Creditor Official Committee of Unsecured Creditors Under Chapter 11 of the Bankruptcy Code for Pacific Gas & Electric Company Dated July 31, 2003 (Entered: 08/04/2003)
07/31/2003	13299	Disclosure Statement For Plan of Reorganization Under Chapter 11 of the Bankruptcy Code for Pacific Gas & Electric Company Proposed by PG&E, PG&E Corp. and the Official Committee of Unsecured Creditors Dated July 31, 2003 (Entered: 08/04/2003)
07/31/2003	13314	Notice of Docketing Record on Appeal (District Court Number: C03-3499-PJH) RE: 13175 Notice of Appeal Filed by Creditor Travelers Casualty and Surety Co. RE: 13131 Order Sustaining: 12324 Notice of Objection and Objection Filed By Debtor Pacific Gas and Electric Co. To Amended Claims #8869, 9911, 9912 and 11335 of Travelers Casualty and Surety Co. (Entered: 08/05/2003)

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08/07/2003	13354	Transcript Re: Appeal RE: 13294 Request for Transcript Filed by Creditor Travelers Casualty and Surety Co. and 13175 Notice of Appeal RE: 13131 Order Sustaining 12324 Notice of Objection and Objection Filed By Debtor Pacific Gas and Electric Co. To Amended Claims #8869, 9911, 9912 and 11335 of Travelers Casualty and Surety Co. (Entered: 08/07/2003)
08/08/2003	13355	Appellant Designation of Supplemental Document (Transcript for the Proceedings held July 11, 2003) For Inclusion in Record On Appeal RE: 13175 Notice of Appeal (USDC# C03-3499-PJH) Filed by Creditor Travelers Casualty and Surety Co. [Receipt Number 30026448, Fee Amount $ 105.00] RE: 13131 Order Sustaining: 12324 Notice of Objection and Objection Filed By Debtor Pacific Gas and Electric Co. To Amended Claims #8869, 9911, 9912 and 11335 of Travelers Casualty and Surety Co. (Entered: 08/08/2003)
08/08/2003	13356	Transmittal of Record on Appeal to U.S. District Court RE: 13175 Notice of Appeal (USDC# C03-3499-PJH) Filed by Creditor Travelers Casualty and Surety Co. [Receipt Number

		30026448, Fee Amount $ 105.00] RE: 13131 Order Sustaining: 12324 Notice of Objection and Objection Filed By Debtor Pacific Gas and Electric Co. To Amended Claims #8869, 9911, 9912 and 11335 of Travelers Casualty and Surety Co. (Entered: 08/08/2003)
08/08/2003	13357	Certificate of Record Re: 13175 Notice of Appeal (USDC# C03-3499-PJH) Filed by Creditor Travelers Casualty and Surety Co. [Receipt Number 30026448, Fee Amount $ 105.00] RE: 13131 Order Sustaining: 12324 Notice of Objection and Objection Filed By Debtor Pacific Gas and Electric Co. To Amended Claims #8869, 9911, 9912 and 11335 of Travelers Casualty and Surety Co. (Entered: 08/08/2003)
08/08/2003	13357	Courts Certificate of Mailing (Number of Notices Mailed: 12) RE: 13357 Certificate of Record Re: 13175 Notice of Appeal (USDC# C03-3499-PJH) Filed by Creditor Travelers Casualty and Surety Co. [Receipt Number 30026448, Fee Amount $ 105.00] RE: 13131 Order Sustaining: 12324 Notice of Objection and Objection Filed By Debtor Pacific Gas and Electric Co. To Amended Claims

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#8869, 9911, 9912 and 11335 of Travelers Casualty and Surety Co. (Entered: 08/08/2003)

08/08/2003	13372	Appellee Designation Filed by Debtor Pacific Gas and Electric Co. of Additional Items to Include in the Record on Appeal RE: 13175 Notice of Appeal (USDC# C03-3499-PJH) Filed by Creditor Travelers Casualty and Surety Co. and Counter-Statement of Issues on Appeal. (Entered: 08/12/2003)
08/12/2003	13390	Errata To Appellee Designation Filed by Debtor Pacific Gas and Electric Co. Of Additional Items to Include in the Record on Appeal 13175 Notice of Appeal (USDC# C03-3499-PJH) Filed by Creditor Travelers Casualty and Surety Co. (Entered: 08/12/2003)
08/12/2003	13390	Counter-Statement of Issues on Appeal Filed by Debtor Pacific Gas and Electric Co. RE: 13175 Notice of Appeal (USDC# C03-3499-PJH) Filed by Creditor Travelers Casualty and Surety Co. (Entered: 08/12/2003)
08/15/2003	13416	Second Supplement to Record on Appeal Filed by Appellant Travelers Casualty and Surety Co. RE: 13175

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Notice of Appeal Filed by Creditor Travelers Casualty and Surety Co. (Entered: 08/15/2003)

08/15/2003	13417	Transmittal of Second Supplemental Document to be Included on Appeal to U.S. District Court RE: 13175 Notice of Appeal (USDC# C03-3499-PJH) Filed by Creditor Travelers Casualty and Surety Co. (Entered: 08/15/2003)
09/02/2003	13542	Objection Filed by Creditor Travelers Casualty and Surety Co. RE: 13298 Plan of Reorganization Filed by Debtor Pacific Gas and Electric Co., Creditor PacificGas and Electric Corp. Creditor Official Committee of Unsecured Creditors UnderChapter 11 of the Bankruptcy Code for Pacific Gas & Electric Company Dated July 31, 2003 (Entered: 09/04/2003)
09/12/2003	13657	Notice of Briefing From the US District Court RE: 13175 Notice of Appeal (USDC# C03-3499-PJH) Filed by Creditor Travelers Casualty and Surety Co. (Entered: 09/18/2003)
11/10/2003	14043	Stipulation and Order Resolving Objection of Travelers Cas. and Surety Company to Plan of Reorganization

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		Under Chapter 11 of the Bankruptcy Code for PG&E Co., PG&E Corp., and the OCC Dated July 31, 2003 (Entered: 11/13/2003)
11/13/2003	14072	Notice of Entry of Order Filed by Debtor Pacific Gas and Electric Co. RE:14043 Stipulation and Order Resolving Objection of Travelers Casualty and Surety Company to Plan of Reorganization Under Chapter 11 of the Bankruptcy Code for PG&E Co., PG&E Corp., and the OCC Dated July 31, 2003 (Entered: 11/17/2003)
12/12/2003	14237	Order Overruling: 13542 Objection Filed by Creditor Travelers Casualty and Surety Co. RE: 13298 Plan of Reorganization Filed by Debtor Pacific Gas and Electric Co., Creditor PacificGas and Electric Corp. Creditor Official Committee of Unsecured Creditors Under Chapter 11 of the Bankruptcy Code for Pacific Gas & Electric Company Dated July 31, 2003 (Entered: 12/15/2003)
12/22/2003	14272	Order Confirming: 13298 Plan of Reorganization Filed by Debtor Pacific Gas and Electric Co., Creditor Pacific Gas and Electric Corp. Creditor Official Committee of Unsecured

Appendix A

Creditors Under Chapter 11 of the Bankruptcy Code for Pacific Gas & Electric Company Dated July 31, 2003, As Modified (Entered: 12/22/2003)

04/09/2004	15079	District Court Order By Judge Hamilton Affirming Bankruptcy Court's Ruling Regarding: 13175 Notice of Appeal (USDC# C03-3499-PJH) Filed by Creditor Travelers Casualty and Surety Co. To: 13131 Order Sustaining: 12324 Notice of Objection and Objection Filed By Debtor Pacific Gas and Electric Co. To Amended Claims #8869, 9911, 9912 and 11335 of Travelers Casualty and Surety Co. (Entered: 04/09/2004)
04/09/2004	15080	District Court Judgment By Judge Hamilton Affirming Bankruptcy's Court Decision Regarding: 13175 Notice of Appeal (USDC# C03-3499-PJH) Filed by Creditor Travelers Casualty and Surety Co. To: 13131 Order Sustaining: 12324 Notice of Objection and Objection Filed By Debtor Pacific Gas and Electric Co. To Amended Claims #8869, 9911, 9912 and 11335 of Travelers Casualty and Surety Co. (Entered: 04/09/2004)

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04/09/2004	15081	Appeal Now Pending at 9th Circuit of Appeals (USCA# 04-15605) RE: 13175 Notice of Appeal (USDC# C03-3499-PJH) Filed by Creditor Travelers Casualty and Surety Co. To: 13131 Order Sustaining: 12324 Notice of Objection and Objection Filed By Debtor Pacific Gas and Electric Co. To Amended Claims #8869, 9911, 9912 and 11335 of Travelers Casualty and Surety Co. (Entered: 04/09/2004)

Appendix A

U.S. DISTRICT COURT
CALIFORNIA NORTHERN DISTRICT
(SAN FRANCISCO)
CIVIL DOCKET FOR CASE #: 3:03-CV-03499

07/29/2003	1	Notice of APPEAL FROM BANKRUPTCY COURT. Bankruptcy Court case number 01-30923 DM. File received. Filed by Creditor Travelers Casualty and Surety Company. (Entered: 07/30/2003)
09/12/2003	11	BANKRUPTCY RECORD ON APPEAL; CERTIFICATE OF RECORD (Entered: 09/12/2003)
11/04/2003	23	Appellant's BRIEF by Creditor Travelers Casualty and Surety Company. Appellee Brief due by 11/4/2003. (Entered: 11/04/2003)
11/04/2003	24	Declaration of Tymchenko in Support of 23 *Appellant's BRIEF* filed by Creditor Travelers Casualty and Surety Company. (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Exhibit C# 4 Exhibit D# 5 Exhibit E# 6 Exhibit F# 7 Exhibit G# 8 Exhibit H# 9 Exhibit I# 10 Exhibit J# 11 Exhibit K# 12 Exhibit L# 13 Exhibit M# 14 Exhibit N# 15 Exhibit O# 16 Exhibit P) (Related document(s) 23) (Entered: 11/04/2003)

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12/15/2003	25	Appellee's Brief On Appeal filed by Pacific Gas and Electric Co. (Entered: 12/15/2003)
12/15/2003	26	Appellee's Excerpts of Record filed by Pacific Gas and Electric Co.. (Attachments: # 1 Exhibit One# 2 Exhibit Two# 3 Exhibit Three# 4 Exhibit Four# 5 Exhibit Five# 6 Exhibit Six) (Entered: 12/15/2003)
12/24/2003	28	Reply Memorandum *Reply Brief* filed by Creditor Travelers Casualty and Surety Company. (Entered: 12/24/2003)
12/24/2003	29	MOTION for Hearing re 28 Reply Memorandum,, 25 Memorandum in Opposition *Request for Oral Argument* filed by Creditor Travelers Casualty and Surety Company. (Entered: 12/24/2003)
01/09/2004	30	RESPONSE to *Appellant's Request for Oral Argument* by Pacific Gas and Electric Co.. (Attachments: # 1 Exhibit Order Re Appellant's Request For Oral Argument) (Entered: 01/09/2004)
02/18/2004	32	ORDER affirming bankruptcy court. Signed by Judge Hamilton on Feb 18, 2004. (Entered: 02/18/2004)

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02/18/2004	33	JUDGMENT in favor of Appellee. Signed by Judge Hamilton on 02/18/04. (Entered: 02/18/2004)
03/17/2004	34	NOTICE OF APPEAL as to 32 Order, 33 Judgment by Creditor Travelers Casualty and Surety Company. Filing fee $ 255, receipt number 3357921. (Filed on 3/17/2004) (Entered: 03/25/2004)
03/17/2004		Received Document USCA Civil Appeals Docketing Statement by Creditor Travelers Casualty and Surety Company. (Filed on 3/17/2004) (Entered: 03/25/2004)
03/18/2004	35	AMENDED NOTICE OF APPEAL as to 32 Order, 33 Judgment by Creditor Travelers Casualty and Surety Company. (Filed on 3/18/2004) (Entered: 03/25/2004)
03/18/2004		Received Document USCA Amended Civil Appeals Docketing Statement by Creditor Travelers Casualty and Surety Company. (Filed on 3/18/2004) (Entered: 03/25/2004)
03/25/2004	36	DESIGNATION of Record on Appeal by Creditor Travelers Casualty and Surety Company re [35] Notice of Appeal, [34] Notice of Appeal (Entered: 03/25/2004)

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03/25/2004	37	TRANSCRIPT DESIGNATION *Pursuant to Circuit Rule 10-3.1* by Creditor Travelers Casualty and Surety Company for proceedings held [ ] (Entered: 03/25/2004)
03/25/2004	38	NOTICE by Creditor Travelers Casualty and Surety Company re 37 Transcript Designation *Statement of Issues on Appeal* (Entered: 03/25/2004)
04/07/2004	39	NOTICE by Pacific Gas and Electric Co. *Counter-Statement Of Issues On Appeal* (Entered: 04/07/2004)
08/19/2005		Certified and Transmitted Record on Appeal to US Court of Appeals (Entered: 08/19/2005)
03/06/2006	41	MANDATE of USCA: AFFIRMED. (Filed on 3/6/2006) (Entered: 03/09/2006)
03/06/2006	42	USCA JUDGMENT. The judgment of the said District Court in this cause is AFFIRMED. (Filed on 3/6/2006) (Entered: 03/09/2006)

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Court of Appeals Docket #: 04-15605

9/3/04	Received Appellant Travelers Casualty's brief in 50 copies 44 pages (Informal: n) deficient : no Excerpts: notified counsel. Served on 9/3/ 04 [04-15605]
9/3/04	Filed original and 15 copies Appellant Travelers Casualty opening brief (Informal: n) 44 pages and five excerpts of record in 2volumes; served on 9/3/04 [04-15605]
9/13/04	Filed motion of Appellant and deputy clerk order : referring to panel motion to take judicial notice, any response thereto, and any furture such requests. [5175314-1] (Motion recvd 9/3/04) [04-15605]
10/27/04	Filed original and 15 copies appellee PG&E's 53 pages brief, 5 suppl Exc. in 1 vol: ; served on 10/27/04 [04-15605]
10/27/04	Filed PG&E motion to take judicial notice [04-15605] served on 10/27/04 [5219063] RECORDS FOR MERITS PANEL PER 9/13/ 04 ORDER reply brief due 11/29/04
11/29/04	Filed original and 15 copies Travelers Casualty reply brief, (Informal: n) 25 pages; served on 11/29/04 [04-15605]

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10/17/05	ARGUED AND SUBMITTED TO Stephen R. REINHARDT, Sidney R. THOMAS, Jane A. Restani [04-15605]
11/21/05	Received G. Eric Brunstad for Appellant Travelers Casualty letter dated 11/18/05 re: Siegel v. Home Loan Mortgage. [04-15605]
2/7/06	FILED MEMORANDUM DISPOSITION: AFFIRMED (Terminated on the Merits after Oral Hearing; Affirmed; Written, Unsigned, Unpublished. Stephen R. REINHARDT, Sidney R. THOMAS, Jane A. Restani) FILED AND ENTERED JUDGMENT. [04-15605]
3/1/0	MANDATE ISSUED [04-15605]
5/15/06	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 05-1429 filed on 5/8/06. [04-15605]
10/10/06	Received notice from Supreme Court, petition for certiorari GRANTED on 10/6/06 . Supreme Court No. 05-1429

APPENDIX B — ORDER ON DEBTOR'S EMERGENCY MOTION FOR AUTHORITY TO PAY PRE-PETITION COMPENSATION AND BENEFITS DATED AND FILED APRIL 6, 2001

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Case No. 01-30923 DM

Chapter 11

HEARING

Date: April 6, 2001
Time: 3:00 p.m.
Place: 235 Pine Street, 22nd Floor
San Francisco, California

In re

PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation,

Debtor.

Federal I.D. No. 94-0742640

ORDER ON DEBTOR'S EMERGENCY MOTION FOR AUTHORITY TO PAY PRE-PETITION COMPENSATION AND BENEFITS

The Court, having considered the Emergency Motion for Authority to pay Pre-Petition Compensation and Benefits (the

"Motion") submitted by Pacific Gas and Electric Company, the debtor and debtor in possession in the above-captioned Chapter 11 case (the "Debtor" or "PG&E"), the Declaration of Russell M. Jackson in support thereof, any opposition to the Motion, the record in this case, and any admissible evidence presented to the Court at or prior to the hearing on the Motion, hereby finds as follows:

A. Adequate notice of this proceeding was given to parties in interest as appropriate under the circumstances.

B. There is good cause for granting the Motion.

Based on the foregoing, **IT IS HEREBY ORDERED** THAT:

1. The Motion is *GRANTED* as provided herein.

2. The Debtor is authorized to pay the pre-petition portion of: (1) regularly incurred wages (including accrued vacation and sick leave); (2) payroll taxes and other payroll deductions; (3) employee health benefits; (4) employer contributions to the employee retirement savings plans; (5) reimbursable employee business expenses; (6) disability and worker's compensation obligations; and (7) payments pursuant to all other regular employee welfare benefits policies, except for any payment with respect to the Supplemental Retirement Savings Plan.

DATED: April 6, 2001

s/ Dennis Montali
HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

Appendix B

Proof Of Claim
Dated September 4, 2001

[*See* Supplemental Joint Appendix]

APPENDIX C — EXCERPTS OF PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE FOR PACIFIC GAS AND ELECTRIC COMPANY DATED AND FILED SEPTEMBER 20, 2001

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Case No. 01 30923 DM

Chapter 11

[No Hearing Requested]

In re:

PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation,

Debtor.

Federal I.D. No. 94-0742640

PLAN OF REORGANIZATION
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE
FOR PACIFIC GAS AND ELECTRIC COMPANY
[Dated September 20, 2001]

[Commencing at page 48]

* * *

(h) *Assumed Indemnification Obligations.* Entry of the Confirmation Order shall, subject to and upon the occurrence

of the Effective Date, constitute the approval, pursuant to Sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the assumption of the Assumed Indemnification Claims. The Assumed Indemnification Claims shall, in all respects, irrespective of whether such claims arise under contracts or executory contracts, survive confirmation of the Plan, remain unaffected thereby, and not be discharged irrespective of whether indemnification, defense, reimbursement of limitation is owed in connection with an event occurring before, on or after the Petition Date.

(i) *Compensation and Benefit Programs.* Except as provided in Section 6.1 of the Plan, all savings, retirement, health care, severance, performance-based cash incentive, retention, employee welfare benefit, life insurance, disability and other similar plans and agreements, all directors and officers liability and other insurance and all workers' compensation programs are treated as executory contracts under the Plan and shall, on the Effective Date, be deemed assumed by the Debtor in accordance with Section 365(a) and 1123(b)(2) of the Bankruptcy Code.

(j) *Retiree Benefits.* Payments, if any, due to any Person for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death under any plan, fund, or program (through the purchase of insurance or otherwise) maintained or established in whole or in part by the Debtor prior to the Petition Date shall be continued for the duration of the period the Debtor has obligated itself to provide such benefits.

* * * *

APPENDIX D — AMENDED OBJECTION OF TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA ET AL. TO DEBTOR'S DISCLOSURE STATEMENT TO ACCOMPANY DEBTOR'S PLAN OF REORGANIZATION DATED SEPTEMBER 20, 2001, FILED DECEMBER 3, 2001

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Case No. 01-30923 DM

Chapter 11 Case

Date: December 19, 2001
Time: 9:30 a.m.
Place: 235 Pine Street
San Francisco, CA

In re

PACIFIC GAS AND ELECTRIC COMPANY,
a California Corporation,

Debtor.

Federal I.D. No. 94-0742640

AMENDED OBJECTION OF TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA ET AL. TO DEBTOR'S DISCLOSURE STATEMENT TO ACCOMPANY DEBTOR'S PLAN OF REORGANIZATION DATED SEPTEMBER 20, 2001

Appendix D

Travelers Casualty and Surety Company et al. (collectively, "Travelers"),[1] by and through its undersigned counsel, hereby submits its objections (the "Objection") to the Disclosure Statement For Plan of Reorganization Under Chapter 11 of the Bankruptcy Code For Pacific Gas and Electric Company Proposed By Pacific Gas and Electric Company and PG&E Corporation (the "Disclosure Statement") dated September 20, 2001 and, in support thereof, respectfully represents and alleges as follows:

Procedural History and Background

On April 6, 2001, Pacific Gas and Electric Company (the "Debtor") filed a voluntary petition for relief under Chapter 11 of title 11 of the United States Bankruptcy Code, § 101 *et seq.* On September 20, 2001, the Debtor filed its Disclosure Statement together with its Plan of Reorganization (the "Plan").

From time to time prior to the commencement of the Debtor's chapter 11 case, Travelers issued on behalf of the Debtor various surety bonds (collectively, the "Bonds") assuring the Debtor's performance of various obligations to third parties including, without limitation, workers' compensation obligations. On September 5, 2001, Travelers filed a proof of claim in the above-captioned case (the

1. The parties represented by this Objection are as follows: Travelers Casualty and Surety Company of America and Travelers Casualty and Surety Company as Administrator for Reliance Insurance Company for itself, as successor in interest by merger with United Pacific Insurance Company, and for Related Reliance Insurance Companies.

"Claim") with respect to the Debtor's obligations under the Bonds. The Claim, as well as the Bonds which are the subject of the Claim, are attached hereto as Exhibit A. In addition, the Debtor's obligations to Travelers under the Bonds are the subject of a indemnification agreement executed by the Debtor's parent, PG&E Corporation (the "Parent").

Objection of Travelers

Travelers objects to the Disclosure Statement principally because it fails to provide adequate information regarding the disposition of the Bonds, and, correspondingly, the treatment of the Debtor's obligations to Travelers under the Bonds. Indeed, the only clear reference to any surety bond is the single sentence appearing on pages 95 and 96 stating that "[t]he parent also guarantees the $401 million of surety bonds the Debtor has in place to secure its workers' compensation obligations." (Disclosure Statement, at 95-96). Although the Disclosure Statement is quite specific in detailing the disposition and treatment of other claims (including the Debtor's reimbursement obligations to issuers of certain letters of credit, *see id.* at 107), it provides no meaningful discussion of the treatment of the Debtor's obligations to Travelers. Accordingly, with respect to Travelers, the Disclosure Statement fails to provide "adequate information" within the meaning of section 1125 of the Bankruptcy Code and should not be approved.

Pursuant to section 1125, adequate information "means information of a kind . . . that would enable a hypothetical reasonable investor . . . to make an informed judgment about the plan. . . ." 11 U.S.C. § 1125(a)(1). As noted by one court:

Appendix D

> The burden of deciphering the meaning of the treatment of a claim should not be placed upon a creditor . . . it is important for these average investors/general unsecured creditors that the Disclosure Statement contain . . . language delineating the consequences of the proposed plan on their claims and the possible [Bankruptcy] Code alternatives so that they can intelligently accept or reject the Plan.

In re Ferretti, 128 B.R. 16, 19 (D.N.H. 1991); *see also* 11 U.S.C. § 1123 (specifying the contents of a plan).

In this instance, the Disclosure Statement fails to provide adequate information regarding Travelers' Claim because it fails to provide even the most rudimentary information regarding the disposition of the Debtor's obligations under the Bonds. Moreover, to the extent that the Disclosure Statement provides general information regarding the Debtor's disposition of its obligations that may or may not bear on the treatment of Travelers' Claim, this information is similarly oblique and inadequate.

For example, the Disclosure Statement indicates that the Debtor is to be divided into separate entities under the terms of certain agreements, including a "master separation and distribution agreement." (Disclosure Statement, at 92). The Disclosure Statement further provides that "[t]he agreements will generally provide for the transfer of assets and assumption of liabilities relating to the business lines, . . . employee matters, indemnification and insurance arrangements" and other matters. (*Id.*). It may be that the

Debtor intends for Travelers' Claim to be affected by these agreements. At the present time, however, this intention remains entirely unclear, and the relevant details have not been supplied.

The Disclosure Statement also provides that "[e]xisting liabilities relating to personal injury, property damage, products liability, . . employment or similar claims against the Debtor, other than the Chromium Litigation, will follow the assets and, as future liabilities arise, they will be the liabilities of the owner of the assets." (*Id.* at 93). It may be that this statement likewise has some bearing on Travelers' Claim. Again, however, this also remains unclear.

The Disclosure Statement further states that, upon the occurrence of certain events, "the current Parent guarantees of the Debtor's workers' compensation obligations will be assumed by the Debtor." (*Id.*, at 96). To the extent that this statement is intended to have any bearing on Travelers' claim, particularly with respect to the Parent's guarantee, this intent should be clarified.

In its present form, the Disclosure Statement fails to provide adequate information regarding the treatment of Travelers' Claim and the disposition of the Bonds. Accordingly, Travelers respectfully requests that this Court: (i) deny approval of the Disclosure Statement; and (ii) grant Travelers such other and further relief as the Court deems appropriate.

Appendix D

Dated: November 30, 2001.

Respectfully Submitted,

Travelers Casualty and Surety Company
By and through its Counsel:

s/ G. Eric Brunstad, Jr.
G. Eric Brunstad, Jr.
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APPENDIX E — EXCERPTED TRANSCRIPT OF PROCEEDINGS BEFORE THE HONORABLE DENNIS MONTALI UNITED STATES BANKRUPTCY JUDGE DATED JANUARY 14, 2002

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. 01-30923-DM

San Francisco, California
Monday, January 14, 2002
9:32 A.M.

Chapter 11

Disclosure statement hearing

In re:

PACIFIC GAS AND ELECTRIC COMPANY,

Debtor.

TRANSCRIPT OF PROCEEDINGS BEFORE THE HONORABLE DENNIS MONTALI UNITED STATES BANKRUPTCY JUDGE

[Commencing at page 93]

* * *

MR. BRUNSTAD: Thank you, Your Honor. Eric Brunstad on behalf of Traveler's, Your Honor.

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What this — what our claim basically involves is primarily worker's compensation benefits. Traveler's issued, before the bankruptcy filing, a $100 million worker's compensation bond, and this is one I think that the debtor — it's important to get right, not only for disclosure statement purposes, but also for operational purposes if the debtors hope to reorganize.

The — obviously, the debtor has employees. Some of those employees get injured. They're entitled to worker's compensation benefits. The debtor is self-insured, meaning it's paid the benefits. But under state regulations, being self-insured, they have to have surety bonds from sources like Traveler's and other surety companies. Traveler's is one of several sureties.

And in this situation, Traveler's filed a proof of claim for the $100 million bond, and also filed 501(b) claims on behalf of all of the claimants. Traveler's has additional [94] bonds that it's issued in various amounts, I think there are about 270 of them, mostly to various state enterprises.

But for purposes of today, Your Honor, I wanted to focus on the worker's comp bonds. And this is basically how it works, and then I'll address why the disclosure statement is inadequate.

Essentially, Your Honor, Traveler's as a surety has two sets of rights. One is its reimbursement right under its general indemnity obligation with the company, it also has the guarantee of the parent for the full amount of the bond, $100 million bond.

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In addition, Traveler's has rights under Section 509, it's subrogation rights to stand in the shoes of the workers. It's imperative from our perspective that the plan detail what's happening to the worker's compensation claims, and unfortunately, looking at the disclosure statement and plan, we're left to guess, we don't know.

We don't know, for example — what happens typically in cases like this is that the claims of the workers are rendered unimpaired. The debtor will simply continue to make all the pre-petition worker's compensation payments in the ordinary course, uninterrupted through confirmation and thereon.

That's relevant to the surety, obviously, because under 509, it has the same rights as the workers in the event [95] the payments are not paid.

What's also relevant is to understand what's happening with respect to the parent guarantee. Now, what the plan tells us, or what the disclosure statement tells us is that there are general unsecured creditors. What we don't know is, are the worker's compensation claims going to be lumped in the general unsecured class?

That doesn't make any sense, because you don't simply give worker's comp — those entitled to worker's compensation benefits notes, or cash payments. In fact, in some jurisdictions, that's prohibited, because they don't want the employees taking a lump sum of all their future benefits, and going off and spending them somehow.

MR. LOPES: Your Honor, if I might cut this short, I haven't had a — we haven't had a chance to have a conversation, but we've got a first day order that authorizes continuing worker's comp in the ordinary course, and —

MR. BRUNSTAD: Yeah. Yes, that's not — it's not what's happening during the case, Your Honor, it's what's going to happen under the plan, and what Traveler's obviously wants to know is what's going to happen to these claims once the plan is confirmed.

Now, we want to know, for example, are they going to — obviously there's going to be some mechanism where I suppose the liabilities on the worker's comp obligations are [96] going to be split apart among the various different entities. That's important to know.

We assume, but we don't know, because we're not being told, that the worker's comp liabilities, perhaps being rendered unimpaired, will be allocated among the different debtors that are to emerge. We don't know what's going to happen with respect to Traveler's subrogation rights, because that's not specified in the plan in any place, and we don't know —

THE COURT: Well, let me stop you for a minute. Is this a disclosure item?

MR. BRUNSTAD: Yes, Your Honor.

THE COURT: Who's the voting creditor?

MR. BRUNSTAD: Well, that's a good question, Your Honor. Traveler's filed proofs of claim on behalf of all of the worker's compensation claimants under 501(b).

THE COURT: But are there pre-petition arrearages?

MR. BRUNSTAD: There are — we don't know, Your Honor.

THE COURT: Okay.

MR. BRUNSTAD: But there are pre-petition claims. Let me make this explicit, Your Honor.

THE COURT: All right.

MR. BRUNSTAD: The worker who was injured before the bankruptcy is filed has a pre-petition worker's compensation [97] claim —

THE COURT: Yes.

MR. BRUNSTAD: — which is paid over time. So notwithstanding the fact that payments mature from here — in the past and in the future, the claim is pre-petition. So you have a whole group of creditors out there who are these injured employees who will ostensibly be continued to receive benefits until they are no longer eligible to receive benefits under applicable state law.

THE COURT: You mean their rights presumably would pass through?

MR. BRUNSTAD: If they are rendered unimpaired.

THE COURT: I mean, any individual who was injured pre-petition may have a claim in the traditional sense, but he or she has been paid up to the petition date, and so you're really just talking about entitlements that continue post-petition?

MR. BRUNSTAD: Well, Your Honor, I think that the best characterization of it, and this is how I've seen it done in other plans, like LTV's plan, and et cetera, are that these are all pre-petition claims that mature in various amounts in the future.

Sometimes under applicable state law you can present value them and give a lump sum, but that's not the preferred way for obvious policy reasons.

[98] In this situation, I understand that these pre-petition claims, the injuries all occurred pre-petition, the liability is established pre-petition, the payments that are made on a monthly, or periodic basis are paid, and will continue to be paid into the future. But they're on account of all pre-petition claims.

So again, it's very simple. Traditionally, what happens is that the debtor wants to render these unimpaired, because if the debtor doesn't render these unimpaired under the plan, they may not be able to get self-insured surety coverage, the state may not allow them to get that post-confirmation, and as I note under the debtor's disclosure statement, they intend to go for self-insurance, but like I said at the outset, this is

an issue which has to be gotten right, in order for their potential program to work.

It also has to be gotten right under 1125, because we need to know what's happening to the claims.

THE COURT: Well, Mr. Lafferty, the summary that you've put together says by way of a response that Traveler's is treated as an unsecured creditor. But your comment is silent on the underlying claimants. What —

MR. LAFFERTY: I'm not sure we understood the rest of the objection. We heard the objection and we responded.

THE COURT: Well, I have the amended objection here, I have it in front of me. I took counsel's word that he was [99] summarizing what he wrote. But let's take a simple answer. What is the fate of pre-petition worker's comp claimants under the post-confirmation regime?

MR. CANTU: Your Honor, Oscar Cantu speaking.

THE COURT: Yes.

MR. CANTU: To make it simple, I believe what we're prepared to do, regardless of what the current state of affairs is, is just to add a statement that makes clear that the claims of the workers themselves will pass through with the reorganized debtor remaining obligated to pay for them.

There may be some allocation done between the entities and some of the agreements — excuse me.

(Counsel confer)

MR. CANTU: Excuse me, I've been corrected now, they'll pass through to the reorganized debtor and the LLCs based on, you know, where the worker was, was basically employed, you know, who they were performing services for in terms of the different divisions.

THE COURT: So if an employee worked in the transmission part of the company, his claim would be honored by E-Trans, or G-Trans —

MR. CANTU: By light transit, yes, sir. Yes.

THE COURT: And the reorganized debtor as well? Both? Jointly?

MR. CANTU: Well, no, only the reorganized debtor if [100] it's a disco claim.

MR. LOPES: If he worked for them.

MR. CANTU: Yes.

THE COURT: Okay.

MR. BRUNSTAD: Okay. The magic words I'm hoping to hear, perhaps I am hearing them, is that they're rendered unimpaired.

THE COURT: Unimpaired.

MR. CANTU: Yes.

THE COURT: Well, Mr. Cantu —

MR. CANTU: Yes?

THE COURT: — what I'm hearing is you're going to flag them and identify these individuals as a separate class, a new class that's not presently in the plan.

MR. LAFFERTY: No, Your Honor.

THE COURT: No?

MR. BRUNSTAD: Well, they have to be classified somehow.

THE COURT: Well, yes, I mean, that's — I saw a head shake.

MR. CANTU: Yes, it's probably easier just to do that at this stage.

THE COURT: But I mean, isn't that a simple solution to say class such and such, or pre-petition worker's comp claims?

[101] MR. CANTU: But the logistics of changing all the class numbers, yes.

THE COURT: Well, put them at the end.

MR. BRUNSTAD: Put them at the end, I don't care if it's in 12(b).

THE COURT: I don't think Mr. Brunstad cares what the class designation is.

MR. BRUNSTAD: I don't, Your Honor.

THE COURT: Right?

MR. BRUNSTAD: Yeah. They obviously can't be classified with general unsecured creditors, they're not going to be treated the same way.

THE COURT: Well, now, then, Traveler's, I guess, itself, however, is really just a contingent claim, isn't it?

MR. BRUNSTAD: But it has subrogation rights, Your Honor.

THE COURT: Yes.

MR. BRUNSTAD: What we'd also like to know is whether our subrogation rights are being rendered unimpaired under 509(a). Simply put, that solves the problem.

THE COURT: Can we have a position on that?

MR. CANTU: Your Honor, I don't believe a subrogation right is a claim against the debtor. It's the right to step into someone else's claim and whatever that treatment is, it is.

[102] THE COURT: Yeah, that's what I thought too. You don't have a separate claim, you just take over the claim.

MR. BRUNSTAD: A long as nothing in the plan will, or purports to impair Traveler's subrogation rights, I'll settle for that.

THE COURT: Well, can we solve that problem, then, by you're defining this new class to be the claimants, but then provide and/or Traveler's to the extent that by subrogation it takes over the claim, words to that effect?

MR. CANTU: Certainly.

MR. LAFFERTY: Certainly.

MR. BRUNSTAD: Terrific, Your Honor.

The second feature of this was Traveler's guarantee with respect to the parent, and this is the language that troubled me in the disclosure statement, and I just didn't understand it, it wasn't clear to me, and this is also one of the issues of our objection.

The language in the disclosure statement, as I read it, purports to provide that the various new entities are going to assume all of the parent's responsibility with respect to worker's compensation obligations, and that that will terminate the parent's guarantee of all the worker's compensation obligations of the debtor.

That, to me, sounds like what they're trying to do, but I'm not sure, is to terminate Traveler's guarantee against [103] the parent, not simply releasing their obligation to the parent, but actually terminating Traveler's guarantee which the parent has issued to Traveler's.

THE COURT: Traveler's is a beneficiary of a guarantee obligation of PG&E Corp.

MR. BRUNSTAD: The parent corp.

THE COURT: And you're concerned that somehow this plan purports to tear that guarantee up?

MR. BRUNSTAD: That's what it seems to suggest on page 136 of the disclosure statement, and what I would like is a clarification that nothing will effect Traveler's guarantee with respect to the parent. It says, "The proponents are evaluating the option of purchasing worker's compensation insurance as a means of eliminating the parent's guarantee of past worker's compensation obligations of the debtor."

THE COURT: Well, by the way, is the extent guarantee one of those that is terminable for future exposure?

MR. BRUNSTAD: It's terminable for — I have it right here, Your Honor.

THE COURT: Well, I don't. But I mean, you can — I mean typically, if the guarantee can be terminated, it doesn't get you off the hook for prior liability, but it terminates you for future liability. So what —

MR. BRUNSTAD: I think for future, it works that way. But what we're concerned about, obviously, is terminating for [104] prior.

THE COURT: Well, the law wouldn't permit that, would it?

MR. KESSLER: Your Honor, the short answer is that the plan is not attempting to release third party claims against third parties.

If Traveler's has a claim against the parent, that's a third party claim against a third party.

THE COURT: Right.

MR. KESSLER: And we are — we will terminate the guarantee on a going forward basis, but not as to claims that existed as of the date of termination.

MR. BRUNSTAD: That's great. That's what I was hoping to get.

MR. KESSLER: We're not suggesting that we have any additional rights to terminate third party claims against third parties.

THE COURT: Mr. Brunstad, are you satisfied with that statement on the record, or are you asking that the disclosure statement say something?

MR. BRUNSTAD: I would like that to be in the disclosure statement, Your Honor.

THE COURT: All right. Looking at 136, the paragraph begins, "At such time as self-insurance is implemented,

proponents expect to terminate the existing agreement of [105] assumption and guarantee of liabilities. . ." et cetera. What would you suggest inserting right around there?

MR. BRUNSTAD: We can talk about language, Your Honor, but it would be something to the effect that nothing in the plan or disclosure statement purports to terminate Traveler's rights under any guarantee with the parent with respect to obligations which Traveler's has bonded, to the date of whatever, when we're talking about.

THE COURT: Mr. Cantu, in concept —

MR. LAFFERTY: Going toward the language, the language says, such termination will eliminate the parent's obligation for any future worker's compensation obligations of the reorganized debtor.

THE COURT: Be quiet, you're the debtor's counsel. You're not the parent's counsel.

MR. LAFFERTY: Sorry.

THE COURT: Mr. Cantu, any objection to the concept of just putting a little comfort sentence in there that —

MR. CANTU: I have a lot of objection to his language, I mean, it's — as stated, Your Honor, but —

MR. BRUNSTAD: Well, I think we understand the concept, we can smith the language so that it states, I think, what we all have been talking about anyway.

MR. CANTU: I think just as an opening point, Your Honor, I'm not sure I understand what problem he has with the [106] existing language that's in there, because I think it says exactly what is being articulated as the issue.

THE COURT: This is one of those classic, if the language is good enough, why isn't he happy, but if you put an innocuous thing in there that says nothing's effected, why aren't — what's your problem? And so the rule on disclosure statement is put it in rather than take it out.

So any reason conceptually putting in a statement to that effect?

MR. CANTU: None at all.

THE COURT: Okay.

MR. CANTU: Other than it's what's there now, but again, I don't mind adding something if it makes him more comfortable.

THE COURT: Okay.

MR. CANTU: I do need to make one comment —

THE COURT: Yes, sir.

MR. CANTU: — about his prior addition that he was seeking, Your Honor.

THE COURT: Okay.

MR. CANTU: I'm not sure we can say in connection with the worker's comp claimants simply that Traveler's has subrogation claims and so they may be, you know, that some of the claims may be theirs. We'll have to do it more generically. I'm just saying this in terms of full disclosure.

[107] MR. BRUNSTAD: That's fine.

MR. CANTU: Because there are other insurers, it's not only Traveler's.

MR. BRUNSTAD: That's fine, Your Honor.

THE COURT: The point is, it's anyone who steps up and pays the claim is subrogated, and takes over the 509 position.

MR. CANTU: Absolutely.

MR. BRUNSTAD: That's terrific, Your Honor.

THE COURT: Okay.

MR. BRUNSTAD: Now, with respect to the last category, which all the other bonds that Traveler's has filed, I assume that again, just consistent with that, Traveler's subrogation rights will remain intact to the extent that those underlying claimants have claims and they're not paid by the debtor, and Traveler's just simply has its subrogation rights, and I think we can leave it at that.

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THE COURT: Okay. Well, then, you can get back to Connecticut and take care of your ear —

MR. BRUNSTAD: Sure.

THE COURT: — but before you go, just work out some mutually satisfactory language with Mr. Cantu, and the next round of the plan will presumably reflect that.

MR. BRUNSTAD: Thank you very much, Your Honor.

THE COURT: All right. Thank you very much.

* * * *

APPENDIX F — SECOND AMENDED PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE FOR PACIFIC GAS AND ELECTRIC COMPANY DATED MARCH 7, 2002

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Case No. 01 30923 DM

Chapter 11 Case

[No Hearing Requested]

In re

PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation,

Debtor.

Federal ID. No. 94-0742640

~~[PROPOSED MODIFICATIONS AS OF FEBRUARY 4, 2002, MARKED TO SHOW CHANGES TO THE DRAFT SUBMITTED TO THE BANKRUPTCY COURT ON JANUARY 10, 2002]~~

~~FIRST~~SECOND AMENDED PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE FOR PACIFIC GAS AND ELECTRIC COMPANY

[Dated ~~December 19, 2001~~March 7, 2002]

[MARKED TO SHOW CHANGES TO THE DRAFT SUBMITTED TO THE BANKRUPTCY COURT ON ~~JANUARY 10, 2002]~~ FEBRUARY 4, 2002]

Appendix F

Counsel for the Debtor, Pacific Gas and Electric Company:

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* * *

Appendix F

4.20 *Class 11—QUIDS Claims.*

(a) *Allowance.* The QUIDS Claims shall be deemed Allowed QUIDS Claims in the amount of $310,000,000.

(b) *Distributions.* Each Allowed QUIDS Claim will be satisfied as follows: (i) all pre-petition interest will be paid in Cash and (ii) the remainder of such Allowed Claim will be paid one hundred percent (100%) in QUIDS Notes.

(c) *Impairment and Voting.* Class 11 is impaired by the Plan. Each holder of an Allowed QUIDS Claim is entitled to vote to accept or reject the Plan.

4.21 *Class 12 - Workers' Compensation Claims.*

(a) *Distributions.* Each Allowed Workers' Compensation Claim arising prior to the Petition Date shall be satisfied in full in the ordinary course of business at such time and in such manner as the Reorganized Debtor, ETrans, GTrans or Gen, as the case may be, is obligated to satisfy such Allowed Claim under applicable law. Post-petition Workers' Compensation Claims are treated as Administrative Expense Claims herein and shall receive the same pass-through treatment as Workers' Compensation Claims arising prior to the Petition Date. Nothing herein shall affect (i) the subrogation rights, to extent applicable or available, of any surety of pre-petition or post-petition Workers' Compensation Claims *or (ii) the rights of the Debtor to object, pursuant to the Bankruptcy Code, to the existence of any such subrogation rights.*

Appendix F

(b) *Impairment and Voting.* Class 12 is unimpaired under the Plan. Each holder of an Allowed Workers' Compensation Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

4.22 *Class 13 - Preferred Stock Equity Interests.*

(a) *Treatment.* Each holder of a Preferred Stock Equity Interest shall retain its Preferred Stock in the Reorganized Debtor and shall be paid in Cash any dividends and sinking fund payments accrued in respect of such Preferred Stock through the last scheduled payment date prior to the Effective Date.

* * *

~~with the Clerk of the Bankruptcy Court on or prior to the date on which the Disclosure Statement and the Ballot are transmitted to the creditors for voting.~~

~~(a) schedules listing the members of the Boards of Control and officers of ETrans, GTrans and Gen;~~

~~(b) schedules listing the directors and officers of Newco and the Reorganized Debtor;~~

~~(c) a schedule of the surplus property and property rights to be sold pursuant to Section 7.5(a) hereof;~~

~~(d) the Land Management Agreement between the Lan Holdings and Gen.~~

Appendix F

~~The information filed with the Ancillary Plan Materials will be limited to the documents listed above. Upon its filing with the Bankruptcy Court, the Ancillary Plan Materials may be inspected in the office of the Clerk of the Bankruptcy Court during normal court hours or through the "Pacific Gas & Electric Company Chapter 11 Case" link available through the website maintained by the Bankruptcy Court at http://www.canb.uscourts.gov. Holders of Claims or Equity interests also may obtain a copy of the Ancillary Plan Materials upon written request to the Debtor at the address set forth in Section 11.15 hereof. In addition, the compensation to be paid to the members of the boards of control and officers of ETrans, GTrans, and Gen and the directors and officers of the Reorganized Debtor and Newco will be provided to the Bankruptcy Court and will be available on the Bankruptcy Court's website prior to the commencement of the Confirmation Hearing.~~

11.20 *Exhibits/Schedules.* All exhibits and schedules to the Plan, including the Plan Supplement ~~and the Ancillary Plan Materials~~, are incorporated into and are a part of the Plan as if set forth in full herein.

11.21 *Subrogation Rights.* ~~The~~Nothing in the Plan shall affect (a) the subrogation rights of any surety, to the extent applicable or available, ~~shall be unaffected by the Plan and~~which, if available or applicable, shall remain in full force and effect; or (b) the rights of the Debtor to object, pursuant to the Bankruptcy Code, to the existence of such subrogation rights.

DATED: ~~December 19, 2001~~March 7, 2002

Appendix F

PACIFIC GAS AND ELECTRIC COMPANY

By: _____
Gordon R. Smith
President and Chief Executive Officer

PG&E CORPORATION

By: _____
Robert D. Glynn, Jr.
Chairman of the Board, Chief Executive Officer and President

APPROVED AS TO CONTENT AND FORM:

HOWARD, RICE, NEMEROVSKI, CANADY, FALK & RABKIN, A Professional Corporation

By: _____
Attorneys for Debtor and Debtor-in-Possession

WEIL, GOTSHAL & MANGES LLP

By: _____
Attorneys for PG&E Corporation

DEWEY BALLANTINE LLP

By: _____
Attorneys for PG&E Corporation

APPENDIX G — SECOND AMENDED DISCLOSURE STATEMENT FOR SECOND AMENDED PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE FOR PACIFIC GAS AND ELECTRIC COMPANY PROPOSED BY PACIFIC GAS AND ELECTRIC COMPANY AND PG&E CORPORATION DATED MARCH 7, 2002

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Case No. 01 30923 DM

Chapter 11 Case

[No Hearing Requested]

In re

PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation,

Debtor.

Federal ID. No. 94-0742640

~~[PROPOSED MODIFICATIONS AS OF FEBRUARY 4, 2002, MARKED TO SHOW CHANGES TO THE DRAFT SUBMITTED TO THE BANKRUPTCY COURT ON JANUARY 10, 2002, FOR THE DISCLOSURE STATEMENT HEARING ON FEBRUARY 7, 2002 AT 1:30 P.M.]~~

Appendix G

~~FIRST~~SECOND AMENDED DISCLOSURE STATEMENT FOR ~~FIRST~~SECOND AMENDED PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE FOR PACIFIC GAS AND ELECTRIC COMPANY PROPOSED BY PACIFIC GAS AND ELECTRIC COMPANY AND PG&E CORPORATION

[Dated ~~December 19, 2001~~March 7, 2002]

[MARKED TO SHOW CHANGES TO THE DRAFT SUBMITTED TO THE BANKRUPTCY COURT ON FEBRUARY 4, 2002]

Counsel for the Debtor, Pacific Gas and Electric Company:

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Appendix G

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Professor Laurence Tribe
Hauser Hall 420
1575 Massachusetts Avenue
Cambridge, Massachusetts 02138

* * *

As a result of the Restructuring Transactions contemplated by the Plan, the Debtor will also enter into negotiations to address the effects on the bargaining unit from the transfer of assets.

4. *Workers' Compensation Obligations.*

Every private employer in California is required to provide workers' compensation coverage, either by purchasing workers' compensation insurance or, with the

permission of the State, self insuring. To self-insure, employers must meet certain criteria for financial strength and stability and must provide security to cover their future workers' compensation liabilities in the event they default on obligations to pay benefits. The security must be in the form of cash, approved securities, surety bonds or irrevocable letters of credit. The Debtor is self-insured and the Parent has entered into an Agreement of Assumption and Guarantee of Liabilities on behalf of the Debtor. The Parent also guarantees the $401 million of surety bonds the Debtor has in place to secure its workers' compensation obligations.

After the Effective Date, the Reorganized Debtor, ETrans, GTrans and Gen plan to satisfy their workers' compensation obligations through self-insurance. The Reorganized Debtor plans to remain self-insured, while ETrans, GTrans and Gen will each apply for approval to self-insure. In each case, approval to self-insure is discretionary. Once approval is obtained, each of ETrans, GTrans and Gen will have its own self-insurance certificate.

When self-insurance is implemented, the Reorganized Debtor and ETrans, GTrans and Gen will be required to post separate collateral to the State to support their self-insured programs. The Proponents currently anticipate that the collateral requirements will be approximately $342 million in 2003. Of that amount, it is anticipated that the Reorganized Debtor will post $205 million and ETrans, GTrans-and Gen collectively will post $137 million.

Appendix G

Nothing in this Disclosure Statement or the Plan shall affect (i) the rights of any surety or the Parent with respect to the Workers' Compensation Indemnity Agreements or (ii) the rights of the parties to object to the existence of such rights. Notwithstanding the foregoing, at such time as self-insurance is implemented, the Proponents expect to terminate the existing Agreement of Assumption and Guarantee of Liabilities which provides for the Parent's guarantee of the workers' compensation obligations of the Debtor to the State. Such termination will eliminate the Parent's obligation for any future workers compensation obligations of the Reorganized Debtor. The Proponents are evaluating the option of purchasing workers' compensation insurance as a means of eliminating the Parent's guarantee of past workers' compensation obligations of the Debtor. Such purchase would require collateral. Nevertheless, while self-insurance has been identified as the likely and preferable approach to workers' compensation, the Reorganized Debtor, ETrans, GTrans and Gen will also evaluate the possibility of purchasing workers' compensation insurance, which would also require collateral.

5. *Treatment of Stock Options.*

Each individual who holds unexercised options to purchase common stock of the Parent (the "Parent Options") under the PG&E Corporation Long-Term Incentive Program will have such options converted into options to acquire common stock of the Parent (the "Parent Replacement Options") and options to acquire common stock of the Reorganized Debtor (the "Reorganized Debtor Options").

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The number of Parent Replacement Options and Reorganized Debtor Options issued to each affected individual shall be equal to the number of unexercised Parent Options held immediately prior to the Reorganized Debtor Spin-Off. The resulting options will maintain the original Parent Option vesting and expiration provisions.

For each grant of Parent Options, the per share exercise price of the corresponding Parent Replacement Options and Reorganized Debtor Options shall be calculated in a manner designed to satisfy the principles of accounting standard FIN 44 by multiplying the exercise price of the original Parent Option by ratios reflecting the relative values of Parent common stock or Reorganized Debtor common stock on the date of the Reorganized Debtor Spin-Off.

K. *REGULATORY IMPACT OF THE PLAN.*

~~Upon consideration of the Plan, except insofar as CPUC regulation of GTrans and Gen will be superseded by FERC regulation,[20] the existing regulation of the Debtor's operations by~~

* * *

~~20. The FERC already regulates the rates, terms and conditions of electric transmission service. ETrans will continue the business of transmitting electric energy in interstate commerce, and will thus continue under FERC jurisdiction. The FERC will regulate GTrans and Gen because their activities after the Effective Date will be interstate rather than intrastate. Gen will be engaged solely in making sales for resale; such wholesale sales rae, by definition, in interstate commerce. See FPA~~

* * *

Appendix G

Certain holders of certain debt senior to the QUIDS have stated that the treatment of the QUIDS Claims under the Plan violates a contractual subordination agreement between the holders of such senior debt and the holders of QUIDS Claims. The Debtor does not believe that the treatment of the QUIDS Claims under the Plan violates such contractual subordination provision. Nonetheless, absent acceptance of the Plan by the senior debt classes, the Debtor cannot guarantee that holders of such senior debt will not attempt to enforce such alleged subordination rights.

22. *Class 12—Workers' Compensation Claims.*

Class 12 includes any Workers' Compensation Claims arising prior to the Petition Date. Class 12 is unimpaired under the Plan. Each Allowed Workers' Compensation Claim arising prior to the Petition Date shall be satisfied in the ordinary course of business at such time and in such manner as the Reorganized Debtor, ETrans, GTrans or Gen, as the case may be, is obligated to satisfy such Allowed Claim under applicable law. Post-petition Workers' Compensation Claims are treated as Administrative Expense Claims under the Plan and shall receive the same pass-through treatment as Workers' Compensation Claims arising prior to the Petition Date. Nothing in this Disclosure Statement or the Plan shall affect (i) the subrogation rights, to the extent applicable or available, of any surety of pre-petition or post-petition Workers' Compensation Claims or (ii) the rights of Debtor to object, pursuant to the Bankruptcy Code, to the existence of such subrogation rights.

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23. *Class 13—Preferred Stock Equity Interests.*

Class 13 includes the Debtor's First Preferred Stock, par value $25.00 per share, and the Debtor's $100 First Preferred Stock, par value $100.00 per share. The Debtor's First Preferred Stock includes: (a) 6% Non-Redeemable First Preferred, (b) 5.5% Non-Redeemable First Preferred, (c) 5% Non-Redeemable First Preferred, (d) 5% Redeemable First Preferred Series D, (e) 5% Redeemable First Preferred Series E, (f) 4.80% Redeemable First Preferred, (g) 4.50% Redeemable First Preferred, (h) 4.36% Redeemable First Preferred, (i) 6.57% Redeemable First Preferred, (j) 7.04% Redeemable First Preferred, and (k) 6.30% Redeemable First Preferred.

19. *Minimum Distributions.*

No payment of Cash less than $100 shall be made by the Debtor to any holder of a Claim unless a request therefor is made in writing to the Debtor. Any payment of Cash made by the Debtor pursuant to the Plan shall first be drawn proportionately from the segregated Cash accounts established pursuant to Sections 7.1(e), 7.2(e) and 7.3(e) of the Plan.

20. *Preservation of Certain Claims.*

Schedule 11.18 to the Plan Supplement contains a list of certain contingent and unliquidated claims of the Debtor against third parties. The Debtor retains these claims, as well as any claims that are or were discovered after the date hereof, and reserves its rights to pursue such claims in any appropriate forum, either prior to or following the Effective Date, except as otherwise provided in the Plan.

Appendix G

21. *Subrogation Rights.*

The subrogation rights of any surety, to the extent applicable or available, shall be unaffected by this Disclosure Statement or any provisions of the Plan and, if applicable or available, shall remain in full force and effect. In addition, the rights of the Debtor to object, pursuant to the Bankruptcy Code, to the existence of any such subrogation rights shall be unaffected by this Disclosure Statement or any provisions of the Plan.

* * * *

APPENDIX H — EXCERPTS OF NOTICE OF DEBTOR'S OBJECTION AND OBJECTION TO CLAIMS OF TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA [CLAIM NOS. 8869, 9911, 9912, AND 11335] DATED AND FILED MARCH 18, 2002

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

No. 01-30923 DM

Chapter 11 Case

Date: April 17, 2002
Time: 1:30 p.m.
Place: 235 Pine Street, 22nd Floor
San Francisco, California

In re

PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation,

Debtor.

Federal I.D. No. 94-0742640

NOTICE OF DEBTOR'S OBJECTION AND OBJECTION TO CLAIMS OF TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA [CLAIM NOS. 8869, 9911, 9912, AND 11335]

* * *

Appendix H

OBJECTION TO CLAIMS

I.

BACKGROUND.

1. On April 6, 2001 (the "Commencement Date"), the Debtor commenced a case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). Since the Commencement Date, the Debtor has continued to operate its business and manage its properties as a debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

2. On or about September 5, 2001, Travelers filed the Claims with the Debtor's claims agent. Travelers' alleged claims against the Debtor arise out of Travelers' surety obligations with respect to certain obligees of the Debtor (the "Obligees"), and, as stated in the Claims, are "unliquidated and contingent as of [September 5, 2001]." The claims are for an unspecified amount of at least $120 million. To date, there is no evidence that Travelers has been called upon to satisfy the Debtor's obligations with respect to the Obligees. Accordingly, the Claims remain contingent and unliquidated. True and correct copies of the Claims are attached hereto as Exhibit "A."

3. The Debtor has reviewed the Claims and objects to such claims for the reasons set forth below.

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II.

OBJECTION.

A. *Claims Numbers 9911, 9912 And 11335 Should Be Disallowed As Duplicative.*

4. Claim Nos. 9911, 9912 and 11335 (collectively, the "Duplicate Claims") are duplicative of Claim No. 8869. With respect to the Duplicate Claims, it appears that Travelers erroneously filed the same proof of claim against the Debtor more than once. Clearly, the Debtor should not be required to pay twice on the same obligation.

5. Therefore, the Debtor objects to each of the Duplicate Claims and requests that such Duplicate Claims be disallowed in their entirety. Because this Objection to the Duplicate Claims does not constitute an objection to the surviving claim, Claim No. 8869, the Debtor reserves the right to object to such surviving claim on any ground whatsoever, including as set forth below. Moreover, any objection by the Debtor to the Claims, shall similarly constitute an objection to the Duplicate Claims to the extent that they are not disallowed as duplicative.

B. *The Claims Should Be Disallowed Pursuant To Bankruptcy Code Section 502(e)(1)(B).*

6. In the Claims, Travelers indicates that it holds contingent, unliquidated claims for reimbursement, subrogation and/or indemnification. Specifically, the Claims provide,

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> "Travelers may hereafter be required to make payments under the Bonds. As a result of such payments, Travelers will become subrogated to the rights of the obligees against the Debtor with respect to such payments and Travelers has the right to be reimbursed and indemnified by the Debtor with respect to all such payments, whether such payments are made on behalf of the Debtor as a principal or on behalf of another principal under any Bond." (Addendum to Travelers Claim Nos. 11335, 8869, 9912, and 9911, ¶5).

7. Regardless of how Travelers chooses to characterize the Claims, such claims must be disallowed pursuant to Section 502(e)(1)(B) of the Bankruptcy Code. Section 502(e)(1)(B) provides as follows:

> "(e)(1) Notwithstanding subsections (a),(b), and (c) of this section and paragraph (2) of this subsection, *the court shall disallow* any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor to the extent that . . . (B) such *claim for reimbursement or contribution is contingent* as of the time of the allowance or disallowance of such claim for reimbursement or contribution." (11 U.S.C. §502(e)(1)(B) (emphases added)

8. A claim must be disallowed under Section 502(e)(1)(B) of the Bankruptcy Code if three elements are established: "(1) the claim is for reimbursement or contribution, (2) the party asserting the claim is liable with

the debtor on the claim of a creditor; and the claim is contingent at the time of allowance or disallowance." *Dant & Russell, Inc. v. Burlington Northern R.R. Co. (In re Dant & Russell, Inc.)*, 951 F.2d 246, 248 (9th Cir. 1991); *In re American Cont'l Corp.*, 119 B.R. 216, 218 (D. Ariz. 1990) (disallowing a contingent claim for reimbursement and/or contribution by an entity, that was co-liable with the debtor); *see also In re Krueger*, 127 B.R. 252, 254 (Bankr. D. Idaho 1991) (denying contingent claim for reimbursement under Section 502(e)(1)(B)).

9. Section 502(e)(1)(B) is broad in scope and is not limited solely to claims for reimbursement and/or contribution. The legislative history of Section 502(e)(1)(B) suggests that "Congress intended to effect a policy of precluding competition between creditors and those whose claims against the estate derive from creditors." *See In re American Cont'l Corp.*, 119 B.R. at 217 (*citing* H.R. Rep. No. 95-595, at 354 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6310; S. Rep. No. 95-989, at 65 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5851).

10. Courts, including this one, have recognized that clai for indemnification fall under the purview of Section 502(e)(1)(B). *See, e.g., Fine Organics Corp. v. Hexcel Corp. (In re Hexcel Corp.)*, 174 B.R. 807, 811 (Bankr. N.D. Cal. 1994) ("[i]n particular, §502(e)(1)(B) was intended to prevent a guarantor from filing a contingent claim for indemnification (before honoring its guaranty) which would compete with the noncontingent claim of the party to whom the debtor was primarily liable"); *In re Pinnacle Brands, Inc.*, 259 B.R. 46, 55 (Bankr. D. Del. 2001) (finding that contractual

indemnification claim amounted to a claim for reimbursement or contribution under Section 502(e)(1)(B) and disallowing such claim); *In re Drexel Burnham Lambert Group, Inc.*, 146 B.R. 92, 96 (S.D.N.Y. 1992) ("it is well-established that contingent claims for indemnity are covered by §502(e)(1)(B)").

11. Travelers' claims for indemnification and/or reimbursement against the Debtor should, accordingly, be disallowed pursuant to section 502(e)(1)(B) because all three elements of Section 502(e)(1)(B) have been satisfied. First, Travelers indicates that its claims against the Debtor are for "reimburse[ment] and indemnifi[cation]." (Addendum to Travelers Claim Nos. 11335, 8869, 9912, and 9911, 15). Second, as a surety to obligations of the Debtor, Travelers is co-liable with the Debtor with respect to such obligations. Finally, Travelers concedes that its claims against the Debtor are contingent and unliquidated. There is no evidence that Travelers has yet been required to honor its surety obligations with respect to the Debtor.

C. *To The Extent That Travelers Asserts A Subrogation Claim, It Should Be Disallowed Under Sections 502(e)(1)(B), 502(e)(1)(C) And 509 Of The Bankruptcy Code.*

12. Similarly, to the extent Travelers asserts subrogation claims, such claims should be disallowed under Sections 502(e)(1)(B) and 509 of the Bankruptcy Code. To the extent Travelers asserts a right of subrogation, such claims are for *prospective* subrogation. Prospective subrogation has been held to fall within the ambit of Section 502(e)(1)(B). *See, e.g., Aetna Cas. & Sur. Co. v. Georgia Tubing Co.*

(In re Chateaugay Corp.), No. 93 Civ. 3659 (LAP), 1995 WL 429018, at *3-*4 (S.D.N.Y. July 20, 1995) ("Aetna's denotation of its claim as one of 'contingent' or 'prospective' subrogation cannot obscure the fact that Aetna is asserting a contingent codebtor claim for reimbursement. . . . [T]he Bankruptcy Court properly disallowed Aetna's claim pursuant to §502(e)(l)(B); it is precisely claims such as Aetna's that §502(e)(1)(B) disallows"), *aff'd*, 93 F.3d 56 (2d Cir. 1996).[3]

13. Furthermore, Travelers' subrogation claims should be disallowed under Section 509(a) of the Bankruptcy Code, which provides, in relevant part, that an entity that is liable with the debtor on, or that has secured, a claim of a creditor against the debtor, *and that pays such claim*, is subrogated to the rights of such creditor to the extent of such payment" (emphasis added). Section 509 clearly provides that claims for subrogation are established only upon a codebtor's payment of the creditor's claim. Thus, *contingent* or

3. In that case, Aetna Casualty & Surety Company ("Aetna") had issued two bonds prepetition to the State of Georgia securing the debtor's obligations under a hazardous waste permit. Although at the time of the filing of its proof of claim (and at the time of the allowance of the claim) Aetna had not yet made any payments under its bonds, Aetna filed a proof of claim in the debtor's bankruptcy case in which it alleged that it " 'may be required to make payments pursuant to some or all of the Bonds in the future' and 'asserts a right of subrogation as to each Bonded Obligation, or portion thereof, which it hereafter pays.' " *Aetna Cas. & Sur. Co. v. Georgia Tubing Corp.*, 93 F.3d 56, 57 (2d Cir. 1996). The district court disallowed Aetna's claim for 'prospective subrogation.' On appeal, the Second Circuit affirmed the district court's holding and noted that Aetna could not obscure its 'contingent codebtor claim for reimbursement' simply by calling such claim one of prospective subrogation.

prospective subrogation under Section 509(a) of the Bankruptcy Code is not possible. *See also In re Chateaugay Corp.*, 1995 WL 429018, at *4 ("Section 509(a) establishes that a codebtor's right of subrogation arises only when and to the extent that the codebtor pays the assured creditor"); *In re Amatex Corp.*, 110 B.R. 168, 168 (Bankr. E.D. Pa 1990) ("the scope of §502(e)(1)(B), in conjunction with 11 U.S.C. §509(a), operates to disallow any contingent co-liability, even if that co-liability has not been judicially established, unless the co-obligor pays the liability and becomes subrogated to the rights of the underlying creditor therefor"). Travelers' claims for subrogation are not valid because, as previously noted, Travelers has not been called upon to honor its surety obligations with respect to the Debtor.

14. In addition, to the extent Travelers asserts subrogation claims, its contingent reimbursement and contribution claims should be disallowed pursuant to Section 502(e)(1)(C) of the Bankruptcy Code. Section 502(e)(1)(C) provides in relevant part, "the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor, to the extent that . . . (C) such entity asserts a right of subrogation to the rights of such creditor under section 509. . . ." The rationale for this is to prevent "double-dipping" by creditors, and to force creditors to elect a remedy with respect to the Debtor. *See United Bank v. Watkins Oil Serv., Inc. (In re Watkins Oil Serv., Inc.)*, 100 B.R. 7, 12 (Bankr. D. Ariz. 1989) ("[the] election, between filing a claim and asserting a right to subrogation, is to prevent a party from receiving more than one recovery. Therefore, if a party has asserted a right to subrogation, the Court should disallow

the claim filed by the party also seeking a right to contribution or reimbursement"); *see also Old Republic Sur. Co. v. Richardson (In re Richardson)*, 193 B.R. 378, 380 (D.D.C. 1995) ("[c]oncededly, [the creditor] has two types of claims: (1) a claim for reimbursement or contribution, and (2) a subrogation claim; and it is clear under the Bankruptcy Code that it cannot have an allowed claim in both categories because that would permit it to effectuate a double recovery"), *aff'd*, 107 F.3d 923 (D.C. Cir. 1997). Thus, to the extent Travelers asserts a right of subrogation, Section 509 of the Bankruptcy Code precludes it from asserting a contingent claim for reimbursement or indemnification with respect to the same obligation.

15. Moreover, pursuant to Section 509(c) of the Bankruptcy Code, to the extent that Travelers asserts claims for reimbursement, contribution or subrogation, such claims are subordinated to the claims of the Obligees for which Travelers is co-liable or has secured, until such creditors are paid in full.[4]

16. The Debtor submits that the Claims should be disallowed in their entirety pursuant to Sections 502(e)(1)(B), 502(e)(1)(C) and Section 509 for the reasons set forth above (and to the extent allowed, should be subordinated pursuant to Section 509(c)).

* * *

---

4. Section 509(c) provides that "[t]he court shall subordinate to the claim of a creditor and for the benefit of such creditor an allowed claim, by way of subrogation under this section, or for reimbursement of contribution, of an entity that is liable with the debtor on, or that has secured, such creditor's claim, until such creditor's claim is paid in full, either through payment under this title or otherwise." 11 U.S.C. §509(c).

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G. *To The Extent That The Claims Are Purportedly Filed On Behalf Of The Obligees, They Should Be Disallowed Under Controlling Bankruptcy Law.*

1. *The Claims Should Be Disallowed For Failure To Meet The Requirements Of Federal Bankruptcy Rule 3005 And Bankruptcy Code Section 501(b).*

24. In the Claims, Travelers contends, "[a]lternatively, pursuant to Bankruptcy Code [sic] 501(b), Travelers submits claims for and on behalf of the obligees . . . and all other persons who may have claims against the Debtor based upon which Travelers may become obligated to make any payment and/or incur any expense under the Bonds. These claims are entitled to priority in part pursuant to Bankruptcy Code §507(a)(8)." (Addendum to Travelers Claim Nos. 11335, 8869, 9912, and 9911, ¶7).

25. Although a codebtor is entitled pursuant to Section 501(b) of the Bankruptcy Code to file a claim in the name of the potential creditor, Federal Rule of Bankruptcy Procedure 3005(a) provides that such codebtor must "execute and file a proof of claim in the name of the creditor, if known, or if unknown, in the entity's own name."[5] The Claims have not been executed and filed in the name of the creditors on whose behalf Travelers purportedly filed them. Rather, the Claims

5. Rule 3005(a) provides, in pertinent part, "[i]f a creditor has not filed a proof of claim pursuant to Rule 3002 or 3003(c), an entity that is or may be liable with the debtor to that creditor, or who has secured that creditor, may . . . execute and file a proof of claim in the name of the creditor, if known, or if unknown, in the entity's own name." Fed. R. Bankr. P. 3005.

are expressly executed and filed in the name of Travelers itself, even though Travelers admittedly knows the names of the Obligees, who, according to the Claims, are set forth on Exhibits A and C thereto. Addendum to Travelers Claim Nos. 11335, 8869, 9912, and 9911, ¶7. Thus, Travelers' assertion that it "alternatively, . . . submits claims for and on behalf of the [O]bligees" is insufficient to satisfy Bankruptcy Rule 3005.

26. Moreover, as previously indicated, a claimant has the burden of setting forth all the necessary facts to establish its claim. Travelers has failed to provide supporting documentation so as to establish the Debtor's liability to Travelers with respect to the obligees listed in Exhibit B. Because Travelers has not established the Debtor's liability to Travelers with respect to such obligees, Travelers cannot show that it is a 'codebtor' to the obligees. Accordingly, Travelers is precluded from asserting a claim on such obligees' behalf, pursuant to Bankruptcy Rule 3005 and Section 501(b) of the Bankruptcy Code. Accordingly, to the extent Travelers has failed to provide sufficient documentation with respect to the obligees, including, but not limited to, those listed on Exhibit B, such claims should be disallowed.

2. The Claims Purportedly Filed On Behalf Of The Obligees Should Be Disallowed As Contingent Codebtor Claims For Reimbursement Under Section 502(e)(1)(B).

27. To the extent that Travelers filed the Claims on behalf of Obligees, such claims should be disallowed pursuant to Section 502(e)(1)(B) to the extent that such claims by the Obligees are contingent codebtor claims for

reimbursement and/or contribution. At least two of the bonds identified in the Claims (Bond No. B1686191 in the amount of $100,000,000 and Bond No. 103487592 in the amount of $300,000) (collectively, the "Workers' Compensation Bonds") secure the Debtor's obligation to reimburse the State of California with respect to workers' compensation obligations based on the Debtor's status as a self-insurer. Currently, the Debtor has no outstanding obligations to the State with respect to workers' compensation. Moreover, the Debtor's obligation to reimburse the State would only arise if the Debtor failed to pay its workers' compensation obligations and the State were required to satisfy such obligations itself.

28. Accordingly, the Debtor submits that the Claims purportedly submitted on behalf of the State of California with respect to the Workers' Compensation Bonds satisfy the three elements of Section 502(e)(l)(B) discussed above. First, the claim on behalf of the State would be one for reimbursement. Second, the State is liable with the Debtor on such workers' compensation obligations. Finally, because the Debtor has not defaulted on its workers' compensation obligations, the State's potential claim for reimbursement is contingent.

29. In light of the foregoing, the Debtor requests that to the extent the claims of the Obligees are codebtor claims for reimbursement or contribution, such claims be disallowed in their entirety.

3. *To The Extent That The Claims Purportedly Filed On Behalf Of The Obligees Are Not Disallowed, They Should Be Reclassified As General Unsecured Claims.*

30. To the extent that the Claims purportedly filed on behalf of certain Obligees, are not disallowed, such alleged priority claims should be reclassified as general unsecured claims. As previously indicated, Travelers asserts that such claims are entitled to priority under Section 507(a)(8) of the Bankruptcy Code. However, Travelers has not articulated, let alone established, how the claims of such Obligees are entitled to priority. Accordingly, to the extent the claims on behalf of the obligees are allowed, they should be reclassified as general unsecured claims for the reasons set forth above.

31. The enumeration of specific objections herein is without prejudice to any and all other objections which PG&E may have and which may be asserted with respect to the Claim, including, without limitation, any objections that may be revealed (to the extent applicable) after supporting documentation is provided and after discovery is taken in these proceedings.

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III.

RELIEF SOUGHT.

WHEREFORE, the Debtor prays that this Court enter an order as follows:

A. Sustaining the Objection to the Claims;

B. Disallowing Claim Nos. 9911, 9912 and 11335 as duplicative;

C. Disallowing the Claims, to the extent filed on behalf of Travelers, in their entirety for the reasons set forth herein;

D. To the extent that Travelers' Claims for subrogation are not disallowed in their entirety, subordinating such Claims until the relevant creditors are fully paid;

E. Disallowing the Claims, to the extent filed on behalf of the Obligees, to the extent set forth herein;

F. To the extent the Claims are not disallowed in their entirety reclassifying as them as general unsecured claims; and

G. Granting such other and further relief as the Court deems just and appropriate.

DATED: March 18, 2002.

Appendix H

Respectfully,

HOWARD, RICE, NEMEROVSKI, CANADY, FALK & RABKIN
A Professional Corporation

By: s/ Gary M. Kaplan
GARY M. KAPLAN

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PACIFIC GAS AND ELECTRIC COMPANY

APPENDIX I — EXCERPTS OF RESPONSE-OF TRAVELERS CASUALTY AND SURETY COMPANY TO DEBTOR'S OBJECTIONS TO TRAVELERS CLAIMS [NOS. 8869, 9911, 9912, AND 11335] FILED MAY 6, 2002

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Case No. 01-30923 DM
Chapter 11 Case

HEARING:
Date: May 20, 2002
Time: 1:30 p.m.
Place: 235 Pine Street
San Francisco, CA
Judge: Hon. Dennis Montali

In re

PACIFIC GAS AND ELECTRIC COMPANY,
a California Corporation,

Debtor.

Federal I.D. No. 94-0742640

RESPONSE-OF TRAVELERS CASUALTY AND SURETY COMPANY TO DEBTOR'S OBJECTIONS TO TRAVELERS CLAIMS [NOS. 8869, 9911, 9912, AND 11335]

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II. The Debtor May Not Obtain the Disallowance of Travelers' Reimbursement Right; Assuming that the Debtor May Do So, Travelers Elects To Preserve Its Subrogation Right, which Is Not Subject to Disallowance.

The Debtor further objects to Travelers' Proof of Claim on the ground that Travelers has not yet paid anything under its Bonds. The Debtor characterizes Travelers' claims as "contingent reimbursement claims" subject to disallowance under section 502(e)(1)(B) of the Bankruptcy Code. In addition, the Debtor challenges and seeks to eliminate Travelers' subrogation right.

Except for Travelers' claim for attorney's fees (for which the Debtor is contractually liable under its indemnification agreement with Travelers), it is true that Travelers has not yet been called upon to make any payment. Hence, it is true that, at the present time, Travelers is not entitled to a distribution from the Debtor's bankruptcy estate (other than on account of the attorney's fees that it has paid) on account of its reimbursement claim. Travelers, however, may be called upon to make payments in the future under its Bonds. The question is whether the Debtor at this point may permanently eliminate Travelers' right to future recoveries.

Although the Debtor is not presently obligated to make a distribution to Travelers on account of Travelers' reimbursement claim, this does not mean that, under the unusual facts of this case, the Debtor may permanently eliminate Travelers' reimbursement right in the event

Travelers is called upon to make payment in the future. For the reasons discussed below, the Debtor is not entitled to do so in this case.

Assuming that the Debtor may permanently eliminate its reimbursement obligation to Travelers, Travelers still retains its right of subrogation. Under this right, in the event Travelers is ever called upon to make payment under its Bonds, Travelers may assert the claims of the Obligees whom Travelers pays, and Travelers may recover on account of their claims.

A. Travelers Is Entitled to Assert Its Rights of Reimbursement and Subrogation.

The obligation of a surety on its bond is not one of insurance; it is one of secondary liability. *See* 74 Am. Jur. 2d *Suretyship* § 1 (2001) ("The surety's obligation is . . . accessory or collateral to the original obligation contracted by the principal"). Although the Debtor would prefer to treat Travelers Bonds as a form of insurance by eliminating Travelers' recourse to the Debtor for any payments Travelers may make, the Debtor may not do so in this case.

The doctrine of reimbursement permits a surety who performs under its bond to assert a direct claim against the debtor in the surety's own name for all amounts the surety has paid. *See Howco Leasing Corp. v. Alexander Dispos-Haul Sys., Inc. (In re Alexander Dispos-Haul Sys., Inc.),* 36 B.R. 612, 616 (Bankr. D. Or. 1983) (the doctrine of reimbursement or indemnity entitles the surety "to compel the principal debtor to repay immediately all or any part of

the principal debt which the surety has paid"). The right exists independently of any contractual arrangement. *See* 74 Am. Jur. 2d *Suretyship,* § 139-141 (2001); Maurice T. Brunner, *What Statute of Limitations Covers Actions for Indemnity,* 57 A.L.R.3d 833, n.23 (2001). In this instance, Travelers has a contractual reimbursement agreement with the Debtor. Under this agreement, Travelers is entitled to recover directly from the Debtor any amount that Travelers may be required to pay under its Bonds, and likewise any of its costs in preserving its rights. Travelers' right of reimbursement is properly a "claim" against the Debtor.

In contrast, the doctrine of subrogation entitles a performing surety to "step into the shoes" of the obligee whom the surety pays and assert all of the obligees's rights against the debtor in order to recover all amounts that the surety has paid to the obligee. *See Pearlman v. Reliance Ins. Co.,* 371 U.S. 132, 138(1962) (subrogation permits a performing surety to "protect itself by resort to the same securities and same remedies which had been available to the [creditor] for its protection. . . ."); *Allen v. See (In re Simmons),* 196 F.2d 608, 610 (10th Cir. 1952) ("[i]t is well settled that where one secondarily liable is called upon to make good of his obligation and pays the debt, he steps into the shoes of the former creditor [and) becomes subrogated to all the rights of the creditor against the principal debtor, including the security given to secure the debt").[1] In this case,

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1. *See also In re Babcock,* 2 F. Cas. 289, 291 (C.C.D. Mass. 1844) (No. 696) (Story, J.) ("And if the creditor has himself already proved his debt in bankruptcy, the surety will have a right upon payment of the debt to stand in equity as substituted to the rights of

(Cont'd)

Appendix 1

Travelers' right of subrogation exists by operation of law and entitles Travelers to assert the claims of any of the Obligees that it pays to the extent that Travelers is ever required to make payment under its Bonds.

Significantly, unlike its right of reimbursement, Travelers' right of subrogation is not itself a "claim" against the Debtor because it is not a "right to payment." On the contrary, Travelers' right of subrogation is merely and exclusively Travelers' equitable right to *acquire* the "claims" of any of the Obligees whom Travelers pays. *See In re Bessemer Materials, Inc.*, 225 F. Supp. at 318 ("subrogation

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the creditor, and will be entitled to the dividends."); *In re Bessemer Materials, Inc.*, 225 F. Supp. 314, 317 (N.D. Ala. 1963) ("[t]he very nature of subrogation is such that the subrogee stands in the shoes of the creditor whom its pays"). As stated by the Supreme Court, there are "probably . . . few doctrines better established . . . ." *Pearlman*, 371 U.S. at 136-37. In addition to its rights of reimbursement and subrogation, a surety also possesses a right of exoneration. The doctrine of exoneration permits a surety who has not yet performed under its bond to compel the principal obligor to do so. *See generally Sylvester v. Martin (In re Martin)*, 130 B.R. 930, 941 (Bankr. N.D. Ill. 1991) (discussing a surety's right of exoneration); 74 Am. Jur. 2d *Suretyship* § 142 (2001) ("[a]fter the debt for which a surety is liable has become due, he may, without paying or being called on to pay it, file a bill in equity in the nature of a bill quia timet to compel the principal debtor to exonerate him from liability"); J.N. Pomeroy, Jr., *Equity Jurisprudence* § 919 at 1490 (1905) (same). Travelers' right of exoneration is not at issue in these proceedings. Further, a surety may also seek "contribution" from any co-sureties. *See Niagara Fire Ins. Co. v. United* States, 76 F. Supp. 850, 855 (S.D.N.Y. 1948) (discussing difference between right of subrogation and right of contribution).

. . . is merely a form of assignment by operation of law."). Thus, in the context of subrogation, the only "claim" that exists is the claim of an obligee:

> Equitable subrogation is the enforcement of the original claim. It is not a separate claim; it is still the injured person's claim although enforced by another.

Insurance Co. of N. Am. v. United States, 76 F. Supp. 951, 953 (E.D. Va. 1948) (citing United *States v. American Tobacco Co.,* 166 U.S. 468, 474 (1897)); *see also In re Wingspread* Corp., 116 B.R. 915, 926 (Bankr. S.D.N.Y. 1990) (noting that the claim of the creditor and the claim of the co-debtor are "in reality . . . a single debt"), *aff'd,* 145 B.R. 784 (S.D.N.Y. 1992), *aff'd*, 992 F.2d 319 (2d Cir. 1993).

Under the Bankruptcy Code, a surety typically has the right to elect between asserting its right of subrogation or its right of reimbursement. Specifically, section 502(e)(1)(C) typically disallows any reimbursement claim to the extent that the surety elects to assert the claim of its obligee through its right of subrogation. 11 U.S.C. § 502(e)(1)(C). Similarly, section 509(b) (1) (A) typically bars the surety from asserting the claim of an obligee whom the surety has paid if the surety asserts its own reimbursement claim and the reimbursement claim is allowed under section 502. 11 U.S.C. § 509(b)(1)(A). Under this scheme, the election belongs to the surety. *See Travelers Ins. Co. v. Cambridge Meridian Group, Inc. (In re Erin Food Servs., Inc.),* 980 F.2d 792, 803 n.19 (1st Cir. 1992) (recognizing co-debtor's option to elect remedy); *American Universal Ins. Co. v. Dunlap* (*In re*

Microwave Prods. of America, Inc.), 118 B.R. 566, 573-74 (Bankr. W.D. Tenn. 1990) (same); *In re Trasks' Charolais,* 84 B.R. 646, 650 (Bankr. S.D. 1988) (same); *In re Fox,* 64 B.R. 148, 151 (Bankr. N.D. Ohio 1986) (same); *In re Baldwin-United Corp.,* 55 B.R. 885, 895 (Bankr. S.D. Ohio 1985) (same); 124 Cong. Rec. S17,403, S17411 (1978) ("to the extent the claim for such surety or codebtor by way of subrogation is more advantageous, such as where such claim is secured, the surety may elect subrogation under section 509.").

Under section 502(e)(1)(B), in the typical bankruptcy case, if the surety elects to assert its reimbursement option, its claim may be disallowed to the extent that it is "contingent" (e.g., the surety asserts a right of recovery against the debtor for amounts that it has not yet paid). *See* 11 U.S.C. § 502(e)(1)(B) . In the event the surety makes payment in the future, however, it may seek reconsideration of the disallowed portion of its reimbursement claim under section 502(j). *See* 11 U.S.C. § 502(j).[2]

In cases in which the debtor liquidates, the surety's 502(j) rights may be of little or no value because, by the time the surety seeks reconsideration, there may be nothing left to pay its reconsidered claim. Similarly, in "pot plan" cases in which the debtor will only make a percentage distribution to unsecured creditors, the same result may also occur. In rare cases such as this one, however, in which the Debtor is obligated to pay all unsecured claims in full, the surety's

2. In addition, if the surety's claim is secured by property of the debtor, it retains whatever *in rem* lien rights it has notwithstanding the disallowance of its reimbursement claim. *See* 11 U.S.C. § 506(d).

section 502(j) rights should retain their full value. *Cf. In re MCORP Financial, Inc.*, 137 B.R. 219, 225-26 (Bankr. S.D. Tex. 1992) (plan that unduly restricted recovery to be determined after reconsideration of disallowed claim under section 502(j) could not be confirmed). Accordingly, notwithstanding that the Debtor is not presently obligated to make a distribution to Travelers on account of Travelers' reimbursement claim, Travelers should nevertheless retain the value of its future right of recovery.

The Debtor should not be entitled to impair Travelers' rights for yet another reason. As discussed in section VIII *infra,* Travelers maintains that, because the Debtor is solvent, the Debtor is not entitled to permanently cut off Travelers' reimbursement right.

B. Travelers May Elect and Preserve Its Right of Subrogation.

Assuming that the Court disagrees with the foregoing, Travelers still retains its election to pursue its subrogation right. Again, Travelers' right of subrogation is not a "claim" against the Debtor because it does not involve a "right to payment." *See* 11 U.S.C. § 101(5). On the contrary, Travelers' right of subrogation is an equitable right arising between Travelers and the Obligees enabling Travelers to acquire the Obligees' claims against the Debtor in the event Travelers is ever required to make payment to the Obligees. Significantly, because Travelers' subrogation right is not a right against the Debtor, Travelers' subrogation right is not subject to disallowance.

Of course, Travelers cannot recover a present distribution from the Debtor on account of its subrogation right. That is so because, at the present time, the only relevant persons with "claims" against the Debtor are the Obligees (e.g., the injured workers to whom the Debtor owes workers' compensation benefits). If the Debtor does not pay the Obligees' claims and Travelers is required to pay these claims in the future, Travelers is entitled to step into the Obligees' shoes and assert the Obligees' claims and rights against the Debtor to recover any amount that Travelers has paid to the Obligees.

In this case, Travelers' right of subrogation is significant, particularly with respect to Travelers' $100 million workers' compensation bond. The Debtor has rendered the claims of its injured workers unimpaired under its proposed plan. *See* Second Amended Plan of Reorganization, dated April 19, 2002 at 57-58, ¶ 4.21, Second Amended Disclosure Statement, dated April 19, 2002 at 214, ¶ 22. Accordingly, to the extent that the Debtor defaults on its obligation to make benefit payments to these employees in the future, the workers themselves are entitled to full payment under the plan and may assert this right against the Debtor. In this instance, Travelers would be subrogated to that right in the event Travelers is ever required to make payment under its bond.

In acquiring an obligee's claim through subrogation, the law is clear that the surety is entitled to assert all of the obligee's rights:

> by the operation of the doctrine of subrogation, the subrogee becomes the owner of the very rights

> of the individual who suffered injury to his person or property; they are not similar or analogous but identical.

Niagara Fire Ins. Co. v. United States, 76 F. Supp. 850, 855 (S.D.N.Y. 1948); *see also Aetna Cas. & Sur. Co. v. United States,* 170 F.2d 469, 471 (2d Cir. 1948) (claim of injured worker for workers' compensation asserted by surety through subrogation was still the claim of the injured worker); *In re Wingspread Corp.,* 116 B.R. 915, 929 (S.D.N.Y. 1990) (payment by surety does not extinguish claim of obligee; claim remains intact for surety to assert through subrogation). As noted by one court applying section 509 of the Bankruptcy Code:

> Under the doctrine of subrogation, a subrogee is entitled to assert any priority or special right of the subrogor. . . . Indeed, § 509 provides that the co-debtor [surety] is subrogated to the 'creditor's rights,' not just the creditor's claim.

Wingspread, 145 B.R. at 791; *see* also H.R. Rep. No. 95-595 at 358 ("Subsection (a) subrogates the codebtor (whether as a codebtor, surety, or guarantor) to the *rights* of the creditor, to the extent of any payment made by the codebtor to the creditor.") (emphasis supplied).

This rule is fully consistent with over a century of bankruptcy law regarding the general assignment of claims. As the Supreme Court recognized long ago, the general rule in bankruptcy is that the transfer of a claim vest in the transferee all of the substantive rights of the transferor,

including any priority specified under the bankruptcy laws. *See Shropshire, Woodliff & Co. v. Bush*, 204 U.S. 186, 188-89 (1907); *see also Mokava Corp. v. Dolan*, 147 F.2d 340, 344-45 (2d Cir. 1945) (assignee of mortgage entitled to assert all of the rights of the assignor against the bankrupt). On many occasions since *Shropshire*, the Supreme Court has reiterated that subrogation means that the surety is entitled to all of the rights of the subrogor. *See Pearlman*, 371 U.S. at 136-37; *United States v. Munsey Trust Co.*, 332 U.S. 234, 239-42 (1947); *In re Chateaugay Corp.*, 89 F.3d 942, 947 (2d Cir. 1996) ("Subrogation is one of the oldest of equitable doctrines. Under its rule, one 'compelled to pay a debt which ought to have been paid by another is entitled to exercise all the remedies which the creditor possessed against that other'") (citation omitted). Travelers is entitled to no less in this case.[3]

III. The Debtor May Not Obtain the Disallowance of Travelers' Subrogation Right.

The Debtor further objects to Travelers' Proof of Claim on that ground that, "to the extent Travelers asserts subrogation claims, such claims should be disallowed under Sections 502(e) (1) (B) and 509 of the Bankruptcy Code." First, as explained above, Travelers does not assert a

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3. With respect to the attorneys' fees that Travelers had paid in this case (and will pay through confirmation of the Debtor's plan), the Debtor is liable for these as neither a "reimbursement" nor a "subrogation" obligation, but purely as a contractual liability under the Debtor's indemnity agreement with Travelers. These amounts properly form the basis of an ordinary, noncontingent claim against the Debtor.

"subrogation claim." On the contrary, Travelers asserts that it possesses a subrogation right arising between Travelers and each of the Obligees, and that this right entitles Travelers to assert the claims of the Obligees to the extent that Travelers must pay the Obligees at some point in the future.

Second, a subrogation right is not subject to disallowance under section 502(e) (1) (B) . By its terms, this section applies only to contingent reimbursement claims.

Third, a subrogation right is not subject to disallowance under section 509(a). This section is not a disallowance provision. Section 509(a) simply restates the general rule that a surety is subrogated to the extent of its payment, and the debtor is not entitled to convert this affirmative declaration of the surety's subrogation right into a disallowance provision.

Alternatively, assuming that the Court concludes that Travelers' subrogation right is a type of "debt" obligation that the Debtor might otherwise curtail, the Debtor would still be prohibited from doing so under section 524(e) of the Bankruptcy Code. In this instance, the relevant property for purposes of section 524(e) is the Obligees' claims. Under the doctrine of subrogation, Travelers is entitled to take assignment of those claims in the event Travelers pays the Obligees under its Bonds. To the extent that the Court agrees with the Debtor that it can treat Travelers' subrogation right as a debt that it may discharge, nevertheless the Debtor many not thereby extinguish Travelers' right with respect to the property of the Obligees. *Cf. NCNB Texas Nat'l Bank v. Johnson*, 11 F.3d 1260, 1266-69 (5th Cir. 1994) (Section

524(e) prevents discharge from affecting guaranties and implicitly preserves guarantors' defenses against liability).

A. Travelers' Subrogation Right Is Not a Claim Subject to Disallowance Under Section 502(e)(1)(B).

The Debtor repeatedly confuses Travelers' subrogation "right" with the concept of a "claim." The Debtor's efforts to mischaracterize Travelers' subrogation right in order to disallow it, however, are contrary to applicable law.

The Code defines the term "claim" as "a right to payment." 11 U.S.C. § 101(5). Obviously, not all "rights" are "claims." *See Nobelman v. American Say. Bank,* 508 U.S. 324, 326-32 (1993); *United* States v. *LTV Corp. (In re Chateaugay Corp.),* 944 F.2d 997, 1008-09 (2d Cir. 1991) (environmental obligation that could not be reduced to a monetary obligation against the debtor was not a "claim"). Similarly, not all "rights to payment" are rights against the debtor. A right of subrogation is neither a right to payment nor a right against the debtor. Hence, it is not a claim subject to disallowance.

But even if a right of subrogation were a claim, it is still not subject to disallowance under section 502(e)(1)(B). This section is very specific in disallowing only contingent reimbursement claims:

> the court shall disallow any claim for reimbursement or contribution of an entity that is

> liable with the debtor on or has secured the claim of a creditor. . . .

11 U.S.C. § 502(e)(l)(B) (emphasis added).[4]

As the court have long recognized, subrogation and reimbursement are legally distinct rights. *See Jenkins v. National Surety Co.*, 277 U.S. 258, 265 (1928) (judicial determination of subrogation rights does not have preclusive effect on later question of reimbursement rights); *Williams v. United* States *Fid. & Guar. Co.*, 236 U.S. 549, 556 (1915) (distinguishing between reimbursement and subrogation rights); *United States v. Burke (In re Miller)*, 105 F.2d 926, 929 (2d Cir. 1939) (distinguishing between reimbursement and subrogation claims); *Tennant v.* United *States Fid. & Guar. Co.*, 17 F.2d 38, 39 & n.1 (3d Cir. 1927) (bankruptcy

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4. *See* note 1, *supra* (discussing right of contribution). As is relevant here, a claim is "contingent" within the meaning of the Bankruptcy Code if liability for the obligation underlying the claim has not yet accrued because critical element of the obligation that would trigger liability has not yet occurred. *See e.g., In re All Media Properties, Inc.*, 5 B.R. 126, 133 (Bankr. S.D. Tex. 1980) ("claims are contingent as to liability if the debt is one which the debtor will be called upon to pay only upon the occurrence or happening of an extrinsic event which will trigger the liability of the debtor to the alleged creditor and if such triggering event or occurrence was one reasonably contemplated by the debtor and creditor at the time the vent giving rise to the claim occurred."), *aff'd*, 646 F.2d 193 (5th Cir. 1981). A reimbursement claim asserted by a surety who has not yet performed under its bond is a classic example of a "contingent" claim. *See, id.* 9 (noting the "classic contingent liability of a guarantor of a promissory note"); *In re Lull Corp.*, 162 B.R. 234, 238-39 (Bankr. D. Minn. 1993).

referee erred in concluding that surety had only right of subrogation; surety also had right of reimbursement). Congress was obviously aware of this distinction because it specifically treated contingent reimbursement "claims" in section 502(e)(l)(B), and subrogation "rights" separately in section 509. Section 502(e) and 509 cross-reference each other, and the legislative history illustrates that Congress clearly appreciated the distinction between the concepts of reimbursement and subrogation.[5]

Moreover, the Bankruptcy Code treats rights of reimbursement and subrogation in quite different ways. By its express terms, Bankruptcy Code Section 502(e)(l)(B) directs the disallowance of reimbursement claims that are contingent, but says nothing about subrogation rights. Given the structure and text of the governing statutory scheme, the Debtor cannot interlineate the term "subrogation" into the text of section 502(e)(1)(8). *See Connecticut Nat'l Bank v. Germain,* 503 U.S. 249, 253-54 (1992) ("courts must presume that a legislature says in a statute what it means and means in a statute what it says there."); *Juniper Devel. Group v. Kahn (In re Hemingway Transp., Inc.)* 993 F.2d 915, 924 (1st Cir.) ("Bankruptcy Code § 502(e)(1)(B) obliges a construction consistent with its plain terms."); *The Leslie Fay Cos., Inc. v. Corporate Prop. Assoc. (In re The Leslie*

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5. *See* 124 Cong. Rec. S17,403, S17410 (1978) (noting that Section 502(e) allows a surety to make a choice between its remedies: "to the extent a claim for . . . reimbursement would be advantageous . . . a surety . . . may opt for reimbursement . . . under Section 502(e). . . . to the extent the claim for such surety . . . by way of subrogation is more advantageous . . . the surety may elect subrogation under Section 509. . . .").

Fay Cos., Inc.), 166 B.R. 802, 810 (Bankr. S.D.N.Y. 1994) (had Congress intended to include grounds for disallowance in § 502 other than those set forth it would have "provided so expressly, most probably by including another subsection"); *Al Tech Specialty Steel Corp. v. Allegheny Int'l, Inc. (In re Allegheny Int'l, Inc.),* 126 B.R. 919, 921-22 (W.D. Pa.) (interpreting § 502(e) by its plain meaning), *aff'd,* 950 F.2d 721 (3d Cir. 1991).

B. Travelers' Subrogation Right Is Not Subject to Disallowance Under the Ninth Circuit's Test For Applying Section 502 (e) (1) (B) .

Interpreting section 502(e)(1)(B) as it is written, the Ninth Circuit has adopted a clear test for its application: "A claim will be disallowed under § 502(e)(1)(B) only if (1) the claim is *for reimbursement* or *contribution*; (2) the party asserting the claim is liable with the debtor on the claim of a creditor; and (3) the claim is contingent at the time of allowance or disallowance." *Dant & Russell, Inc. v. Burlington Northern Railroad Co. (In re Dant & Russell, Inc.),* 951 F.2d 246, 248 (9th Cir. 1991) (emphasis supplied). To state this test is to demonstrate the inapplicability of Section 502(e)(1)(B) in this matter because Travelers' "subrogation right" is clearly not a claim for reimbursement or contribution. The text of Section 502(e)(1)(B) is unambiguous and there is no reason to believe that Congress intended to include subrogation rights within its scope.

Furthermore, Section 502(e)(1)(B) only disallows *contingent* claims, and Travelers' subrogation right is *not* contingent. Travelers' subrogation right is a presently existing

right that Travelers has to acquire the claims of the Obligees by paying the Obligees at some point in the future. For each of these reasons, section 502(e)(l)(B) does not apply.[6]

C. Disallowing Travelers Subrogation Right Would Not Serve any of the Purposes of Section 502(e)(1)(B).

As explained by one court, the primary purpose of Section 502(e)(1)(B) is the avoidance of the problem of "double-dipping":

> The sole purpose served by section 502(e)(1)(B) is to preclude redundant recoveries on identical claims against insolvent estates. . . . The 'double-

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6. Although somewhat confusing, the Second Circuit's decision in *Aetna* Casualty & *Surety Co. v. Georgia Tubing Corp.*, 93 F.3d 56 (2d Cir. 1996), does not support the Debtor's arguments in this case. At issue in *Georgia Tubing* was the debtor's liability to the surety for future clean-up costs under an environmental bond that the surety issued to the State of Georgia on the debtor's behalf before the debtor filed for bankruptcy. In considering whether the debtor would be liable to reimburse the surety for any amounts that the surety might pay in the future, the court unfortunately conflated the concepts of "reimbursement" and "subrogation." Nevertheless, the court clearly concludes that the surety will be entitled to recover from the debtor in full in the event the surety is ever required to make payment under its bond in the future: "If, as Aetna apprehends, Georgia Tubing should incur environmental liabilities to Georgia when its facility is closed sometime in the future, and if Aetna is then called upon to pay Georgia with respect to such liabilities, nothing in the order we affirm today bars whatever reimbursement claims Aetna might then have." *Id.* at 57.

> dipping' threat in the present case would result from the allowance and estimation of [the co-debtor's] contingent claim, and the allowance of [the creditor's] claim, for the same future claim] against the chapter 7 estate.

In re Hemingway Transp., Inc., 993 F.2d at 923. As *Hemingway* makes clear, the problem of "double-dipping" occurs when a creditor and a surety each assert a separate claim for the same liability. That problem arises, however, only in the context of contingent reimbursement and contribution claims.[7] In contrast, "double-dipping" does not arise in the context of a subrogation right because there is no possibility that both the obligee and the surety will recover (or even seek to recover) twice on the same liability. Again, that is because, through subrogation, the surety and the creditor share the *same* claim, not two separate claims.

In addition, the *Hemingway* court identified a second (and closely parallel) goal of Section 502(e)(1)(B): "Section 502(e) (1) (B) was enacted . . . 'to prevent[] *competition*

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7. By way of illustration, suppose a surety has guaranteed in full the debtor's payment of a $100 note to a creditor. Suppose the debtor is insolvent and files for bankruptcy relief having paid nothing on the note. The creditor may file a claim for $100. Suppose further that the surety has not paid the creditor on its guaranty. Under these facts, the surety would hold a contingent $100 claim for reimbursement against the debtor (contingent upon the surety's payment under the guaranty). Permitting the surety to recover on its claim in addition to permitting the creditor to recover would result in "double-dipping" – the payment of two $100 claims asserted by two separate entities against the debtor for the same liability.

between a creditor and his guarantor for limited proceeds of the estate.'" *In re Hemingway Transp., Inc.*, 993 F.2d at 923 (quoting H.R. Rep. No 595, 95th Cong., 1st Sess. 354 (1977); S. Rep. No 989, 95th Cong., 2d Sess. 65 (1977) (emphasis in original)). In most bankruptcy cases, the debtor typically lacks the wherewithal to satisfy all claims in full. Obviously, if the surety who has not yet paid on its bond could assert a contingent reimbursement claim directly against the debtor, and the creditor could do so as well for the same liability, the surety and creditor would stand in competition with each other for potentially limited dividends. Section 502(e)(1)(B) operates to disallow the contingent reimbursement claim of the surety to prevent that from happening.

However, the very nature of subrogation will not permit a similar result. Travelers and the obligees can only share the *same* claim, and Travelers' interest in the claims is subordinate to that of the obligees. *See* 11 U.S.C. § 509(c). This comports with the purpose of subrogation: the surety merely asserts the creditor's claim. Thus, there is only one claim to allow and one claim to pay regardless of its holder. Therefore, the possibility that Travelers will "compete" with the obligees for the same assets of the Debtor simply cannot exist. *See In re Chateaugay Corp.*, 155 B.R. 625, 634 (Bankr. S.D.N.Y. 1993), *aff'd*, 177 B.R. 176 (S.D.N.Y. 1995) (recognizing surety's right of subrogation to workers' payment rights arising pre-petition).

Appendix I

D. Travelers' subrogation Right Is Not Subject to Disallowance Under Section 509(a).

Travelers subrogation right is similarly not subject to disallowance under section 509(a) because this section is not a disallowance provision. On the contrary, the section merely reaffirms the general rule of subrogation that "an entity that is liable with the debtor on, or that has secured, a claim of a creditor against the debtor, and that pays such claim, is subrogated to the rights of such creditor to the extent of such payment." 11 U.S.C. § 509(a). Further, there is no basis to convert section 509(a) into a disallowance provision. Section 509(a) contains no temporal restriction, and, under the section, the surety is entitled to be subrogated to the rights of its obligee *whenever* it is called upon to make payment to the obligee. *See Pandora Indus., Inc. v. Paramount Communication Inc., (In re Wingspread Corp.),* 145 B.R. 784, 791 (S.D.N.Y. 1992) (holding that the surety in question was entitled to be subrogated to the benefit of the creditor's rights arising after the debtor filed for bankruptcy relief as a result of the debtor's postpetition assumption of a lease).

The right of subrogation is central to the suretyship relationship, and is fundamental to the nature of Traveler's undertaking:

> That privilege was a necessary incident to petitioner's contract, for only by resort to it could the character of the contract as indemnity be preserved. It is both the object and the justification of subrogation that it makes exact indemnity the measure of liability.

Aetna Gas. & Sur. Co. v. Phoenix Nat. Bank & Trust Co., 285 U.S. 209, 214 (1932); *see also Bessemer,* 225 F. Supp. at 317-18 ("Contract prices and surety premium rates are regulated in the overall scheme of the business world to reflect this valuable [subrogation] right of parties assuming secondary liabilities."). If Congress had intended section 509(a) to constitute a disallowance provision, it would have said so expressly. Moreover, construing section 509(a) as a disallowance provision would simply generate a windfall to the Debtor by permitting the Debtor to destroy Travelers' recourse even though the Debtor remains fully obligated on any underlying debt to the Obligees.

Reference to section 509(b) also refutes the Debtor's construction of section 509(a) as a disallowance provision. Section 509(b) operates expressly to disallow a right of subrogation in a very narrow range of circumstances, none of which are present here. Similarly, section 507(d) bars subrogation in certain enumerated settings, none of which apply in this case. If Congress had intended to disallow a right of subrogation in cases such as this one for the reasons stated by the Debtor, Congress could have done so expressly. Congress' election not to bar subrogation in cases such as this one is conclusive, and the Debtor cannot create a further barrier to subrogation where it does not exist. *See In re Chateaugay Corp.*, 89 F.3d 942, 948 (2d Cir. 1996) (obligation to make payment in the future is sufficient to entitle surety to be subrogated when it pays); *Wingspread*, 145 B.R. at 791 (the Code's express statutory limitations on surety's right of subrogation demonstrates the breadth of Section 509(a) in contexts in which sections 507(d) and 509(b) do not apply). Accordingly, Travelers' claims cannot be disallowed under section 509.

* * * *

APPENDIX J — STIPULATION RESOLVING DEBTOR'S OBJECTIONS TO CLAIMS OF TRAVELERS CASUALTY AND SURETY COMPANY [CLAIMS NOS. 8869, 9911, 9912, AND 11335]; ORDER THEREON FILED NOVEMBER 8, 2002

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

No. 01-30923 DM

Chapter 11 Case

JUDGE: Hon. Dennis Montali

HEARING:
DATE: November 8, 2002
TIME: 1:30 p.m.
PLACE: 235 Pine Street, 22nd Floor
San Francisco, California

In re

PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation,

Debtor.

Federal I.D. No. 94-0742640

STIPULATION RESOLVING DEBTOR'S OBJECTIONS TO CLAIMS OF TRAVELERS CASUALTY AND SURETY COMPANY [CLAIMS NOS. 8869, 9911, 9912, AND 11335]; ORDER THEREON

Appendix J

* * *

STIPULATION RESOLVING DEBTOR'S OBJECTIONS TO CLAIMS OF TRAVELERS CASUALTY AND SURETY COMPANY [CLAIMS NOS. 8869, 9911, 9912, AND 11335]; ORDER THEREON

This Stipulation is entered into by and between Pacific Gas and Electric: Company, the debtor and debtor in possession in the above-referenced bankruptcy case ("PG&E" or "Debtor") and Travelers Casualty and Surety Company of America and Travelers Casualty and Surety Company as Administrator for Reliance Surety Company (1) for itself, (2) as successor in interest by merger with United Pacific Insurance Company, and (3) for related Reliance Insurance companies (collectively "Travelers") as follows:

A. On April 6, 2001 (the "Petition Date"), PG&E filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq., in the above-captioned Court.

B. Since the Petition Date, the Debtor has continued to operate its businesses and manage its properties as a debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

C. Prior to the Petition Date, Travelers issued various surety bonds (the "Surety Bonds") to various third parties on behalf of the Debtor assuring the Debtor's performance of various obligations, including, without limitation, the Debtor's provision of certain workers' compensation benefits under applicable state law.

D. On or about September 5, 2001, Travelers filed a certain proof of claim assigned Claim No. 8869 on behalf of:

(a) Travelers Casualty and Surety Company of America and Travelers Casualty and Surety Company as Administrator for Reliance Surety Company (1) for itself, (2) as successor in interest by merger with United Pacific Insurance Company, and (3) for related Reliance Insurance companies; and

(b) various obligees of the Surety Bonds and all other persons who may have claims against the Debtor based upon which Travelers may become obligated to make payment and/or incur expense under the Surety Bonds (collectively, the "Travelers' Claims").

E. At the rime Travelers filed its proof of claim form for the Travelers Claims, the noticing agent apparently recorded copies of Travelers' proof of claim form as separate claims bearing Claim Nos. 9911, 9912, and 11335 (collectively, the "Duplicate Claims") (The Duplicate Claims and the Travelers Claims are collectively referred to herein as the "Claims").

F. As set forth in the Travelers' Claims, in conjunction with the issuance of the Surety Bonds, the Debtor executed a certain Continuing Agreement of Indemnity dated June 11, 1992, and a certain Continuing Agreement of Indemnity dated June 6, 1991 (the "Indemnity Agreements").

G. Pursuant to the Indemnity Agreements, the Debtor is obligated to indemnify Travelers for certain losses that Travelers may incur as a result of, or in connection with, its issuance of certain of the Surety Bonds, including certain attorneys fees.

H. In addition, as set forth in the Travelers' Claims, PG&E Corporation ("PG&E Corp.") executed a certain Specific Indemnity Agreement dated April 7, 2000, pursuant to which PG&E Corp. is obligated to indemnify Travelers with respect to certain losses that Travelers may incur as a result of its issuance of a certain workers' compensation bond (the "Parent Indemnity")

I. Other than its attorneys' fees, Travelers has not been called upon to satisfy any of the obligations assured by, or to make any payment under, any of its Surety Bonds or with respect to the Indemnity Agreements.

J. In the future, Travelers may be obligated to perform certain obligations, or to make payments, with respect to one or more of the Surety Bonds.

K. On or about March 18, 2002, the Debtor filed an objection to the Claims (the "Objection").

L. By this Stipulation, PG&E and Travelers seek to fully resolve all objections to the Claims without further litigation as provided herein, and to that end the parties hereby stipulate and agree as follows:

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1. The Duplicative Claims (Claim Nos. 9911, 9912, and 11335) are hereby disallowed in their entirety as duplicative of Claim No. 8869, leaving only Claim No. 8869.

2. With respect to Claim No. 8869, other than Travelers' claim for attorneys' fees (which is discussed below), Travelers has not been called upon to satisfy any of the obligations assured by, or to make any payment with respect to, any of its Surety Bonds or the Indemnity Agreements.

3. Accordingly, except as provided herein with respect to Travelers' claim for attorneys' tees and subject to the provisions hereof, Claim No. 8869 is hereby disallowed pursuant to Section 502(e)(1)(B) of the Bankruptcy Code.

4. Claim No. 8869 is further disallowed to the extent that PG&E and Travelers have no liability on certain of the Surety Bonds (based upon, among other things, all liability being extinguished by the obligees under any such Surety Bond, or under the terms of any such Surety Bond).

5. The disallowance of Claim No. 8869 is without prejudice to (i) Travelers' right to seek reconsideration of the disallowance of Claim No. 8869 under Section 502(j) of the Bankruptcy Code in the event Travelers satisfies, or is obligated to make payment with respect to, any of the Surety Bonds or in connection with the Indemnity Agreements; or (ii) PG&E's right to oppose any such reconsideration.

6. Nothing herein shall affect or impair whatsoever the Parent Indemnity.

7. Nothing herein shall prejudice or impair Travelers' subrogation rights under applicable law, or the Debtor's right to object to Travelers' asserted subrogation rights.

8. To the extent that Travelers is subrogated to the claim of any obligee under any of its Surety Bonds, Travelers shall hold such claim as a general unsecured creditor, provided that, to the extent that the claim in, the hands of the obligee is entitled to priority, Travelers shall be entitled to the same priority with respect to such claim, except as provided in section 507(d) of the Bankruptcy Code.

9. Subject to the right of a party in interest to object as provided herein, Travelers may assert its claim for attorneys' fees under the Indemnity Agreements as a general unsecured claim against PG&E as follows:

a. Travelers shall file an amended claim setting forth the amount of its asserted attorneys' fees within sixty days of the date the Court's order approving this Stipulation, which amended claim shall include all attorneys' fees incurred through such date, and shall serve such amended claim on counsel for PG&E, the Creditors' Committee, and the United States Trustee.

b. PG&E, the Creditors' Committee, the United States Trustee, or other party in interest, shall file any objection to Travelers' claim for attorneys' fees within sixty days of the filing and service thereof, and, subject to Travelers' right to reply to any such objection(s), the Court shall resolve any such objection(s) absent settlement by the parties.

c. In the event PG&E, the Creditors' Committee, the United States Trustee, and any other party in interest do not object to such claim for attorneys' fees, the amount asserted shall be allowed and paid as a general unsecured claim in PG&E's bankruptcy case.

d. The allowance of Travelers' attorneys' fees, if any, pursuant to the foregoing shall be without prejudice to (i) Travelers' right, if any, to assert and recover additional attorneys fees incurred after the filing of its amended claim in connection with and to the extent that PG&E shall thereafter object to or challenge Travelers' asserted rights, if any, under the Surety Bonds or the Indemnity Agreements, or PG&E shall impair under any confirmed plan of reorganization the workers' compensation claims of any person covered by any of Travelers' Surety Bonds; or (ii) the right of PG&E, the Creditors' Committee, the United States Trustee, or any other party in interest, to object to any such additional claimed attorneys fees.

10. The Debtor and Travelers may agree to a list of obligations covered by the Surety Bonds as to which the Debtor's and Travelers' liability has been extinguished by operation of law or otherwise and may file such list with the Court in connection with a further stipulation, in which event any claim asserted by Travelers under Section 501(b) with respect to such liability shall be disallowed. Nothing herein shall prevent the Debtor from specifically objecting to any claim asserted under Section 501(b), in which event Travelers shall be given notice of such objection.

Appendix J

Dated: November 8, 2002 TRAVELERS CASUALTY & SURETY COMPANY

By s/ G. Eric Brunstad, Jr.
BINGHAM McCUTCHEN LLP
G. ERIC BRUNSTAD, JR.
One State Street
Hartford, Connecticut 06103-3178
Telephone: (860) 240-2700
Facsimile: (860) 240-2800

Counsel for Travelers Casualty & Surety Company of America

Dated: November 8, 2002 PACIFIC GAS AND ELECTRIC COMPANY

By s/ Gary M. Kaplan
Gary M. Kaplan
Title: Howard, Rice, Nemerovski, et al.
Attorneys for Pacific Gas and Electric Company

Based upon the foregoing Stipulation, and good cause appearing therefore, it is SO ORDERED.

Dated: NOV 08 2002

s/ Dennis Montali
HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

Appendix J

Proof Of Claim
Dated January 3, 2003
[*See* Supplemental Joint Appendix]

APPENDIX K — EXCERPTED NOTICE OF OBJECTION AND OBJECTION TO AMENDED CLAIM OF TRAVELERS CASUALTY & SURETY CO., ET AL DATED APRIL 28, 2003 AND FILED MARCH 7, 2003

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Case No. 01-30923 DM

Chapter 11 Case

Date: April 28, 2003
Time: 1:30 p.m.
Place: 235 Pine Street, 22nd Floor
San Francisco, California

In re

PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation,

Debtor.

Federal I.D. No. 94-0742640

NOTICE OF OBJECTION AND OBJECTION TO AMENDED CLAIM OF TRAVELERS CASUALTY & SURETY CO., ET AL.

* * *

Appendix K

3. Travelers' Amended Claim Seeks Recovery Of Amounts That Are Not Compensable Under The Indemnity Agreements And The Stipulation, Are Not Reasonable And Are Not Recoverable As A Matter Of Bankruptcy Law.

Even if Travelers could assert a valid claim for attorneys' fees and had properly set forth such claim, the Amended Claim should nevertheless be disallowed because it asserts a claim for attorneys' fees and other expenses that are not recoverable under the Indemnity Agreements, the Stipulation and applicable bankruptcy law, as discussed in greater detail below.

a. The Attorneys' Fees Sought Are Not Recoverable Under the Indemnity Agreements And The Stipulation.

As a threshold matter, the attorneys' fees sought by Travelers in the Amended Claim are not compensable under the Indemnity Agreements. The Indemnity Agreements (copies of which are attached to the Amended Claim) provide that PG&E agrees "[t]o indemnify, and keep indemnified and hold and save harmless [Travelers] against all demands, claims, loss, costs, damages, expenses and attorneys' fees whatever, and any and all liability therefore, sustained or incurred by [Travelers] *by reason of executing or procuring the execution of*" certain surety bonds (emphasis added).

Travelers has not asserted, let alone established, that the attorneys' fees sought in the Amended Claim arose from the execution or procurement of the execution of the subject

surety bonds. Indeed, the Amended Claim simply attaches a list of attorneys' fees and costs totaling over $167,000.00, with no explanation other than that the fees arise "under the Indemnity Agreements." Based on Travelers' failure to articulate any basis upon which the attorneys' fees and expenses claimed in the Amended Claim fall within the Indemnity Agreements, the Amended Claim should be disallowed in its entirety.

Moreover, even if Travelers establishes that some of the claimed attorneys' fees are compensable under the Indemnity Agreements, certain fees plainly fall outside of its scope. For example, the Amended Claim asserts a claim for attorneys' fees in the thousands of dollars for research and drafting related to "constitutional arguments" and "constitutional aspects" of the PG&E bankruptcy case. By no stretch of the imagination were such fees sustained or incurred by Travelers "by reason of executing or procuring the execution of" the subject surety bonds.

Furthermore, Travelers' claim for recovery of costs, aggregating $28,462.38 should be disallowed in its entirety because such amounts are not permitted under the Stipulation. The Stipulation (paragraph 9) expressly limits Travelers to "assert[ing] its claim for attorneys' fees under the Indemnity Agreement" and otherwise disallows the Original Claims in their entirety.

b. Certain Of The Attorneys' Fees Are Unreasonable.

Even if some of the claimed attorneys' fees and other expenses are potentially recoverable under the Indemnity Agreements and the Stipulation, they should be disallowed to the extent that they are not reasonable. Some of the claimed charges are patently false. For example, the Amended Claim includes fees incurred by T. Tymchenko in the amount of $1,134.00[3] (5.4 hours) for an April 2, 2002 telephone conversation with Gary M. Kaplan, an attorney for the Debtor. *See* Bingham Invoice No. 55781 (copy attached hereto as Exhibit 3). As reflected in the fee application previously submitted to and approved by this Court, the length of that conversation was merely 0.2 hours. *See* Time Records Exhibit For The Period April 1, 2002 — April 30, 2002 (Howard, Rice, Nemerovski, Canady, Falk & Rabkin) (Docket No. 10120) (copy of relevant pages attached hereto as Exhibit 4).

The Amended Claim also includes tens of thousands of dollars of travel time by Travelers' attorneys. For example, T. Tymchenko billed 10 hours on December 3, 2001 for "[t]ravel to San Francisco for attendance of status conference regarding disclosure statement" at a cost of $1,750.00. *See* Bingham Invoice No. 540897 (copy attached hereto as Exhibit 5). In addition to the 5.5 hours ($962.50) that Ms. Tymchenko has billed for her "return to Hartford from status

3. The Invoices suggest that Bingham provided Travelers a 10% discount on the referenced attorneys' fees. As such, 90% of the time referenced has actually been billed and asserted in the Amended Claim.

conference" on December 4, 2001 is a separate entry the next day of 10 hours ($1,750.00) for her "return to Hartford from status conference." *Id.* Even giving Ms. Tymchenko the benefit of the doubt by assuming that her flight spanned two calendar days, it is unreasonable that the Debtor's estate should pay for 15.5 hours of return travel time, or that Travelers sent two attorneys from the East Coast (Mr. Brunstad's time for this hearing is also included in the Amended Claim) for this hearing. *Id.*

Furthermore, it is not reasonable for Travelers' counsel to fly coast-to-coast to attend hearings in this case in view of this Court's practice of permitting telephonic appearances, and the availability of instructions for doing so on the Court's website. There was certainly no need for Mr. Brunstad to personally attend the November 8, 2002 hearing where this Court was merely asked to approve the previously agreed upon Stipulation, for which he billed a total of 18.2 hours ($10,283.00), including 22 hours ($880.00) to "[p]repare for and attend hearing approving stipulation resolving objection to Travelers' claim" (Bingham Invoice No. 581586 (copy attached hereto as Exhibit 6)) where the record reflects that Mr. Brunstand was present at the hearing for only a few minutes. *See* Transcript of Proceedings held in this Court at 1:30 p.m. on November 8, 2002 (copy of relevant pages attached hereto as Exhibit 7). Moreover, the amount of the charges for such time are inconsistent with the professional fee standards set by the Court in this case. *See, e.g.*, *Memorandum Decision Regarding Applications For Interim Compensation Of Professionals*, entered by this Court on December 12, 2001 (the "Compensation Order") ("the court will not allow any of the portions of the applications that

included airplane travel time"). While the Debtor recognizes that the Compensation Order is not binding on the attorneys hired by Travelers, it should nonetheless serve as a guide in the determination of the reasonableness of fees.

The Debtor estimates that at least $50,000.00 of the claimed attorneys' fees are unreasonable. In addition, much of the expenses for which Travelers seeks recovery are unreasonable, including thousands of dollars of travel expenses and electronic research.

c. Virtually All Of The Attorneys' Fees And Related Expenses Are Not Reimbursable, As They Are Purely Bankruptcy-Related.

Even if some of the claimed attorneys' fees and costs are potentially recoverable under the Indemnity Agreements and Stipulation and are not unreasonable, it is well established in the Ninth Circuit that creditors may not recover fees for purely bankruptcy-related expenses. *See, e.g., In re Elmer Fobian*, 951 F.2d 1149 (9th Cir. 1991) ("where the litigated issues involve not basic contract enforcement questions, but issues peculiar to federal bankruptcy law, attorney's fees will not be awarded absent bad faith or harassment by the losing party"); *Renfrow v. Draper*, 232 F.3d 688 (9th Cir. 2000) ("attorney's fees should be awarded solely to the extent they were incurred in litigating state law issues").

Virtually all of the attorneys' fees claimed by Travelers should be denied on this basis. For example, the Amended Claim includes substantial attorneys' fees for reviewing and

objecting to the Chapter 11 plans and related disclosure statements proposed by the Debtor and the California Public Utilities Commission. These are purely bankruptcy-related expenses and should be disallowed under controlling law.

d. The Attorneys' Fees And Related Expenses Should Be Disallowed Pursuant To Section 502(e)(1)(B) of the Bankruptcy Code.

To the extent that any of the attorneys' fees and other expenses claimed by Travelers are not disallowed on the grounds set forth above, they should be disallowed pursuant to Section 502(e)(1)(B) of the Bankruptcy Code to the extent that they are based on contingent reimbursement claims with respect to obligations for which Travelers is co-liable with the Debtor. As discussed above, the basis for the Amended Claim is unclear from its face or the Invoices provided by Travelers. Nevertheless, the Amended Claim apparently seeks recovery of attorney fees incurred with respect to contingent reimbursement claims. Section 502(e)(l)(B) provides that a bankruptcy "court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor, to the extent that," such claim is, "contingent as of the time of [its] allowance or disallowance." 11 U.S.C. § 502(e)(1)(B). Like the Original Claims, the Amended Claim should be disallowed pursuant to this provision to the extent it is similarly based on Travelers' contingent reimbursement claims with respect to claims for which Travelers asserts that PG&E is co-liable. *See, e.g., In re The Drexel Burnham Lambert Group, Inc.*, 146 B.R. 92, 97 (S.D.N.Y. 1992) ("[t]he interdependence between appellant's defense costs and the underlying action

for indemnification places all of the appellant's claims under the umbrella of § 502(e)(1)(B), and thus all claims are disallowed under that subsection"); *In re Wedtech Corp.*, 85 B.R. 285 (Bankr. S.D.N.Y. 1988) (same).

CONCLUSION

WHEREFORE, the Debtor prays that this Court enter an order:

A. Sustaining the Objection to the Amended Claim;

B. Disallowing the Amended Claim in its entirety; and

C. Granting such other and further relief as this Court deems just and appropriate.

DATED: March 7, 2003.

Respectfully,

HOWARD, RICE, NEMEROVSKI, CANADY, FALK & RABKIN
A Professional Corporation

By: s/ Gary M. Kaplan
GARY M. KAPLAN

Attorneys for Debtor and Debtor in Possession
PACIFIC GAS AND ELECTRIC COMPANY

APPENDIX L — LETTER FROM G. ERIC BRUNSTAD, JR. OF BINGHAM McCUTCHEN TO GARY M. KAPLAN OF HOWARD, RICE, ET AL. DATED MAY 11, 2003

G. Eric Brunstad, Jr.
Direct Dial: 860.240.2717
E-Mail: eric.brunstad@bingham.com

May 11, 2003

VIA TELECOPIER

Gary M. Kaplan, Esq.
Howard, Rice, Nemerovsky, Canady,
Falk & Rabkin
Three Embarcadero Center, 7th Floor
San Francisco, California
94111-4024

Re: In re Pacific Gas & Electric Company, Case No. 01-30923 DM

Dear Gary:

Per your request, we have broken down our bills into four different categories. The first (Exhibit A) includes the time spent in connection with the disclosure statement, including objecting to the disclosure statement and responding to the debtor's pleadings. The second (Exhibit B) includes the time spent in connection with the plan, including objecting to the plan and responding to the debtor's pleadings. The third (Exhibit C) includes the time spent in connection with our proof of claim, including the debtor's objections to our claim and our responses to the objections.

Appendix L

The fourth (Exhibit D) includes the time spent in connection with general case management and miscellaneous case administration. In addition, as you also requested, this letter also sets forth succinctly the basis why the debtor is and should be liable for our fees.

As you are aware, Travelers has issued a $100 million surety bond assuring the debtor's performance of its workers' compensation obligations. You may recall that we initially objected to the disclosure statement because neither it nor the plan made specific provision for the treatment of workers' compensation obligations. This was of considerable concern for two reasons. First, if the debtor did not pay its workers' compensation obligations, it would likely loose its self-insured status under applicable state law. As a result, at some point the debtor would be required to purchase workers' compensation insurance, which generally costs about four times the expense of a surety bond. Second, from Travelers' perspective, the treatment of the workers' compensation claims had to be specified because, in the event Travelers ever had to make payment under its bond, Travelers would be entitled to be subrogated to whatever treatment the workers were entitled to receive under the plan.

At the hearing on the disclosure statement, we pursued our objection and explained the above-referenced points. After we made our argument, the Court agreed that the parties should step outside the courtroom and resolve the treatment of the workers' compensation claims and Travelers' rights. We were able to do this, and announced our settlement to the Court. Specifically, we agreed that the plan would provide that the claims of the workers entitled to workers'

compensation would be rendered unimpaired (meaning that they would be paid in full as and when they came due). We also agreed that the plan would leave unimpaired any right that Travelers would have to be subrogated to the claims of the workers in the event Travelers were ever called upon to make payment under its bond. As agreed, this negotiated language appeared in the next version of the amended plan and, from Travelers' perspective, we were essentially done with the case.

Unfortunately, in a subsequent round of plan amendments, the debtor unilaterally elected to alter the negotiated language and provide that it reserved the right to object to Travelers' subrogation rights. In addition, the debtor filed an objection to our proof of claim, contending that Travelers had no subrogation rights. As a result, Travelers was forced to defend its rights.

Travelers' subrogation rights are state law rights. Travelers' subrogation rights mean simply that, in the event Travelers is ever required to make payment under its bond, it is entitled to recover what it has paid by asserting the rights of the claimants whom Travelers has paid. Thus, if Travelers ever has to make payment under its bond to a specific worker covered by the bond, Travelers would then be entitled to step into the worker's shoes and assert the worker's rights against the debtor. Subrogation is nothing more than a right that arises between Travelers and the worker incident to Travelers' bond giving Travelers the right to assert the worker's claim in the event Travelers' pays the worker. In other words, it is nothing more than the right to take assignment of the worker's claim against the debtor if Travelers ever pays the worker.

Appendix L

Significantly, Travelers does not contend that, having not paid anything under its bond, it is entitled to a distribution from the debtor at this time. Quite to the contrary, at the present time it is the workers who are entitled to payment presently. It is only if the debtor were to default in the future and Travelers had to step in to pay the claims that Travelers would be entitled to assert the workers' rights against the debtor.

Quite clearly, Travelers had to object to the disclosure statement and its objection was fruitful not only for Travelers but also for the debtor in so far as the treatment of the workers' compensation claims was resolved. Following the debtor's unilateral modification of the plan, however, Travelers also had to respond to the debtor's efforts to cut off Travelers' subrogation rights by objecting to the debtor's alleged right to do so, which included an objection to the plan. These rights are valuable, and it is Travelers' position that the debtor has no basis for eliminating them. Travelers also had to defend its proof of claim because the debtor objected to the claim on the theory that the debtor could eliminate Travelers' subrogation rights. Further, Travelers has incurred expenses in monitoring the case.

As you know, the debtor executed an indemnity agreement with Travelers. Under the terms of the indemnity agreement, the debtor is responsible for paying all attorneys fees that Travelers has incurred in defending its rights, including its state law subrogation rights. I must reiterate that the vast majority of Travelers' expenses would have been avoided if the debtor had simply adhered to the negotiated language that was originally included in the plan. Indeed, it was the

debtor's election to modify the language and object to Travelers' rights that caused Travelers to incur the vast majority of the expenses set forth in billings. Given the debtor's decision to unilaterally modify the negotiated language and cause Travelers to incur additional legal expenses, it would be patently unfair for the debtor now to object to the payment of Travelers' legal bills.

You have specifically objected to certain expenses, and the attached billing statements reflect adjustments in response to these objections. In addition, Travelers has authorized me to accept a ten percent discount in settlement of this matter with the debtor. Please advise.

Sincerely,

s/ G. Eric Brunstad, Jr.
G. Eric Brunstad, Jr.

APPENDIX M — EXCERPTED TRANSCRIPT OF PROCEEDINGS — OBJECTION TO AMENDED CLAIM OF TRAVELERS CASUALTY & SURETY COMPANY, et al. DATED JULY 11, 2003

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
(SAN FRANCISCO DIVISION)

Case No. 01-30923 DM

Chapter 11

San Francisco, California
July 11, 2003
1:29 p.m.

In re:

PACIFIC GAS AND ELECTRIC COMPANY,
a California Corporation,

Debtor.

TRANSCRIPT OF PROCEEDINGS
OBJECTION TO AMENDED CLAIM OF TRAVELERS CASUALTY & SURETY COMPANY, et al.

BEFORE THE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

[Commencing at page 21]

* * *

MR. BRUNSTAD: To the extent Travelers asserts a right of subrogation, such claims are for prospective subrogation —

THE COURT: Yeah, prospective.

MR. BRUNSTAD: Prospective subrogation has been held to follow the ambit of 502{e)(1)(B). It basically asks to have it determined that our subrogation rights are to be determined the same way as our contingent reimbursement rights, which isn't true.

THE COURT: Either way, they're just theoretical; aren't they? They're just static out there.

MR. BRUNSTAD: Here's the problem. This —

THE COURT: Ten years from now if they blow a worker's comp claim and you have to step up, you're subrogated, correct?

MR. BRUNSTAD: Not if their objection stood. What they were seeking — and this is what we were arguing about; this is why we had these long negotiations that resulted in the stipulation — we were arguing about whether we would have our subrogation rights. We said — [22] and they've acknowledged recently but they didn't then; they've acknowledged recently that well, subrogation rights aren't a claim. We really can't do anything to them. Beautiful. But the position they were taking then, which fomented the litigation and the back and forth and the negotiations, was that they were taking the position they could cut off our

subrogation rights. And by doing that, they would essentially convert Travelers' Surety Bond into an insurance policy.

THE COURT: How can — how can the Debtor have done that in the context of the claim objection? Wouldn't — if they wanted to have a declaration that you don't have any now or ever in the future, it would require an adversary proceeding for dec relief; wouldn't it? And isn't the context of this objection just to knock out some specific claim by number?

MR. BRUNSTAD: Well, Your Honor, we briefed that. That's exactly what we responded to. They can't do that. But they didn't agree; they wouldn't concede that point. They were pressing forward with the litigation. That's the problem. We had to defend our subrogation right. We also had to defend our reimbursement rights in a very narrow way. It is true that contingent reimbursement rights are subject to disallowance under 502(e)(1)(B), and the Court is fully aware why. You can't double dip; you can't have [23] both the worker's claim and the surety's claim at the same time.

However — however, 502(j) of the Bankruptcy Code allows you to be able in the future if the contingency matures to have your disallowed claim reconsidered.

THE COURT: Well, or alternatively, you're allowed to assert a new claim against this Debtor.

MR. BRUNSTAD: It depends on what the plan says. Some plans cut off —

THE COURT: Well, did this plan attempt to cut off that right?

MR. BRUNSTAD: It didn't say.

THE COURT: Well, that strikes me then that it didn't cut it off.

MR. BRUNSTAD: Correct, Your Honor.

THE COURT: It's more like a path through.

MR. BRUNSTAD: This is a minor — this is a minor point, Your Honor. All that we were asking to do on the reimbursement side was to simply say, in the future, we would have a 502(j) right, whatever that might happen to be.

Now, we resolved these disputes in our stipulation. Our stipulation says it preserves our 502(j) right on page 5 of our stipulation, which is at Exhibit I. So we were successful in reaching agreement on that. There [24] was a little bit of fight, but it was a little fight, and we were able to agree on that.

We were also able to resolve what our subrogation rights would be in the stipulation. There's paragraph 7 on page 5 which says, nothing in the stipulation prejudices our subrogation rights or the Debtor's rights to object to them. And then paragraph 8 goes on to say, to the extent we are subrogated, we will hold our claims just like the workers as an unsecured claim, and we're perfectly entitled to subrogate it to whatever priority they have, except to the extent Section

507(d) provides otherwise. We had to fight for that. But we settled it.

The problem, Your Honor, is that —

THE COURT: Did you really have to fight? Doesn't the law give you that?

MR. BRUNSTAD: That's what the law gives us, but the Debtor objected to everything; that's the problem, Your Honor. We had to fight over all of these things to get to the point of the stipulation. We had to litigate it. We had to litigate what our subrogation rights —

THE COURT: Well, okay. But is that true? What if you'd just said, well, okay, we won't require paragraph 8. Don't you get it anyway? Doesn't the law give you exactly what paragraph 8 gives you?

MR. BRUNSTAD: It depends on what the plan says.

[25] THE COURT: Well, but what did the plan say on that subject?

MR. BRUNSTAD: At that point, Your Honor —

THE COURT: Silent, huh?

MR. BRUNSTAD: The plan provided that our subrogation rights were unimpaired except to the extent the Debtor would object otherwise. The plan specifically left open in its terms the right of the Debtor to make whatever objection it wanted to.

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THE COURT: But — but it didn't give up meritorious objections; there was nothing in the stipulation that surrendered to either side issues beyond the four corners of the stipulation.

MR. BRUNSTAD: True, Your Honor, except that the plan was not a stand-alone item. It was coupled with their express objection which they filed to our claim, which they tried to eviscerate all of our rights. That is the problem. Standing on itself, the plan language would have been fine. The problem was that the Debtor commenced litigation against us by filing an objection to our claim in which they asserted we had no rights now or in the future.

THE COURT: Well, suppose — suppose the Debtor hadn't asserted that but had just taken a claim and said, [26] this is a 502(e) or whatever subsection it is, period, and you gave up?

MR. BRUNSTAD: We wouldn't be here today.

THE COURT: But would you be allowed to recover your attorney's fees for asserting a claim?

MR. BRUNSTAD: Well, that gets into the second issue.

THE COURT: I mean now we're under pure Federal law; aren't we? If you file a claim that is not meritorious, you can't claim attorney's fees under any theory for defending an unmeritorious claim. Can you?

MR. BRUNSTAD: Well, I think, Your Honor, that we were entitled to file a Proof of Claim, because remember, at the time at which one files a Proof of Claim, one doesn't know if one has to pay on the underlying bonds or not.

THE COURT: I know, but you did know on the day — Travelers knew on that day that — it didn't know that there was any claim.

MR. BRUNSTAD: Correct.

THE COURT: In other words, it was a protective filing —

MR. BRUNSTAD: Correct, Your Honor.

THE COURT: — which is much different from the kind of claim you would have filed it you'd already written [27] a check for two million dollars to some bunch of employees.

MR. BRUNSTAD: Correct, Your Honor.

THE COURT: So —

MR. BRUNSTAD: Correct, Your Honor. Our Proof of Claim was simply that, a very simple form in which we said we were — we just wanted everybody to know what our rights are. We attached — we attached a copy of our bonds; we attached a copy of the indemnity agreement.

THE COURT: No, I know. I know. I know what you did. But I mean what — what you're saying in a sense — let me see if I can restate it without — because I'm a fly on the

wall here and I'm just going to try to summarize — Travelers says, you know, we filed a claim that is — that really there was nothing to claim, and the Debtor could have objected to that claim all by itself, and we're — we don't get paid for it. But what the Debtor did is it asked for more in the objection than it took to knock the claim out.

MR. BRUNSTAD: Right.

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[32] * * *

THE COURT: But I don't think it would help your [33] cause here. It's just to show that you did your homework. That's all. But come on, where's the entitlement for protecting your bankruptcy law rights? That's what I've got to —

BRUNSTAD: Yes, Your Honor.

THE COURT: — in the context of default.

MR. BRUNSTAD: Let's take the simple illustration of having to file a Proof of Claim in bankruptcy to protect one's rights. Is that something for which if you incur attorney's fees to file a Proof of Claim, you're entitled to get paid for it? I think the answer, Your Honor, is yes.

THE COURT: Well, we don't usually allow attorney's fees on preparation of Proofs of Claim in here generally. I mean —

MR. BRUNSTAD: If your —

THE COURT: — but you know, that begs the question, because you didn't have to file a Proof of Claim.

MR. BRUNSTAD: Well, Your Honor, it turns out — well —

THE COURT: You had no claim to file. I mean that's the point I was making. I'm not laughing at you or your client, but the fact that the objections were meritorious proves that you had no claim to file. Maybe the Debtor went a little bit too far in trying to seek more [34] than just get the claim knocked out, and I want to hear your comments on that.

MR. BRUNSTAD: That's the problem, Your Honor.

* * *

[35] THE COURT: Yes, but objections would have been sustained to all of them.

MR. BRUNSTAD: Except they've all been rendered unimpaired.

THE COURT: I know, but look, I'll grant you maybe — I mean I have to say, Mr. Brunstad, it's a little bit hard for me to think that a company that walks into the Bankruptcy Court with a four billion dollar net worth and from the first day of its now two and a quarter year-old bankruptcy is committed to pay its creditors in full, it's possible there might have been some worker out there who wasn't getting his

worker's comp coverage, but I don't really think it's really accurate to assume it. And maybe even by the claims bar date, you couldn't possibly have gotten every single fact, but the fact of the matter is, not one of those claimants nor one of the sureties has one dollar worth of claim in the case. Right?

MR. BRUNSTAD: Correct. That's correct. The only parties who actually hold claims are the workers. But the surety has rights in connection with those claims, and that is what we were trying to protect. That is why we filed our Proof of Claim, and those are the rights that we wanted everyone to be on notice of that we do have those interests and those rights. We were never seeking to get dollars out of the estate for amounts that we didn't pay.

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THE COURT: They didn't — they didn't ask for a declaration that you never ever under any subsequent events have no subrogation rights. I mean — I mean (d) can't be construed that way because it talks about getting your principals, your obligees paid in full. And (e) is repetitive of (d), and (f) is kind of nothing.

MR. BRUNSTAD: Well, the first thing they did was —

THE COURT: (g) is boilerplate, so —

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MR. BRUNSTAD: The first thing, Your Honor, they did was they asked to sustain the objections to the claims. Among their objections was their argument that:

> "Our subrogation rights are for prospective subrogation and they fall within the ambit of 502(e)(1)(B)."

That's what they briefed, and they asked to sustain their objections. For what other reasons could it be than what they briefed. They've submitted an order to Your — and they cite to the *Georgia Tubing* case; and they basically make an argument that there's no difference between contingent reimbursement claims and prospective subrogation rights. That's what they argued in their — that's what they argued and that's what they want Your Honor to do. If they didn't want Your Honor to do that, why did they argue [45] it? We had to respond to it. If we had gone by default and they got an order saying we have no prospective subrogation rights, or something broad saying all of the claims for relief in their objection are sustained, we'd be in the position of having to then come back at a future date and say, oh, no, no, no, it couldn't possibly have meant that. But as a lawyer, I couldn't counsel my client to take that kind of a risk, let a judgment enter against you where they're praying for relief to disallow your subrogation rights? And then hope that in the future, a court will go back and say well, that couldn't have been what the Court meant even though we didn't defend the claim?

THE COURT: Okay. So what you want me to do is to say that in the context of invoking some very specific bankruptcy provisions, namely 502 and its various subparts,

that the Debtor went one more step and turned this into a dec relief that challenged your subrogation rights as a matter of State law.

MR. BRUNSTAD: What the Debtor —

THE COURT: I mean that's what you're — that's what I think you're telling me you're concerned about.

MR. BRUNSTAD: My concern was this, Your Honor, because I've seen this in many, many, many bankruptcy cases; this is not the first. This is in a series of many [46] bankruptcy cases. The Debtor was trying to eliminate our subrogation rights. One of the things that we said — one of our counter arguments was that the Debtor couldn't do that, and we actually resolved it by entering into the stipulation.

The problem though, Your Honor, and the very narrow problem, is that we had to litigate over this issue. We had to respond to their objection in which they claimed that our subrogation rights were the same as contingent reimbursement claims and therefore should be disallowed. We had to brief it, and then we had to engage in settlement negotiations over it, and my client had to incur legal fees to do that. It was acting to protect its rights which under the very broad indemnification provision in the contract, which isn't as narrow by its language or its intent as opposing counsel suggests — he was again quoting selectively from it — we're entitled to — the client is entitled to recover its attorney's fees for having to defend its State law rights.

And this is not because we came in here and asked the Court for a declaration; it's because we negotiated language

for the plan which the Debtor then unilaterally changed and then commenced litigation against us. And as part of that litigation was very specifically briefing its theory that our rights were just contingent reimbursement [47] rights — claims, and should be disallowed on that basis. That's the problem. That's why we had to litigate. If the Debtor had honored its commitment and stuck with the negotiated language that we agreed to and was put in the plan, we wouldn't be here. We'd be done.

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MR. BRUNSTAD: And we did not — we never disputed that our contingent reimbursement rights were subject to disallowance.

THE COURT: Well, that's what I was leading up to. The surety would go out on the same argument.

MR. BRUNSTAD: Correct. Absolutely. We never — we never — we never opposed that. The only thing we wanted though was recognition, because this is a solvent debtor who is paying all claims in full. It's not a pot plan where once the money is gone; it's gone. This is a solvent debtor. We wanted to make sure that our 502(j) rights were preserved with respect to our contingent reimbursement claim.

But we never had any objection to having our contingent reimbursement claim disallowed. That was not an issue. We didn't litigate over that. We didn't press that. And we resolved

the 502 issue in our stipulation. But what we were fighting about and what we fought about and what we had to brief in response to the Debtor's objection was that a subrogation right is not the same [50] thing as a contingent reimbursement claim. I mean on page 5 of their objection, they argued:

> "To the extent Travelers asserts a right of subrogation, such claims are for prospective subrogation. Prospective subrogation has been held to fall within the ambit of 502(e)(1)(B). 502(e)(1)(B) deals with contingent reimbursement claims."

That is wrong. They put that issue — they put that issue in the litigation. We briefed — we had to incur legal fees to brief and respond to it. Even though they now concede, of course, that's not right, we still had to — they now concede that a subrogation right is not a claim, okay. They said so in their papers. Even though they now concede that, we had to fight about it then, and we had to fight about it because they chose to litigate that issue.

Now, we ultimately settled it in the stipulation. But the stipulation does several things. It preserves our 502(j) rights. It preserves our subrogation rights, subject to their right to object, and it allows us to file our claim for attorney's fees, which we've done. So now we are litigating over whether we're entitled to attorney's fees.

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MR. BRUNSTAD: Well, that's I think a point, Your Honor. One point in response to that, Your Honor, is that no, there's no bankruptcy section that allows them to object to our subrogation rights. They were trying to do it under some other theory because bankruptcy law doesn't allow them to do it. Nothing in the Bankruptcy Code allows a debtor to object to a surety's subrogation rights, because they are rights that arise between the surety and the bond beneficiary. The debtor has nothing to do with it. We stand in the shoes of the workers. It's the same thing as though someone took assignment. The law says, subrogation operates — or basically is the same thing as assignment by operation of law.

THE COURT: Well then, if that's true, what you just said, then the Debtor wasn't — there was no threat to you when they were saying they want to reserve the right to object to your subrogation rights. Because you just essentially said that they couldn't.

MR. BRUNSTAD: That's right. We said they couldn't, but they were doing it any way. We still had to defend. And besides other courts have messed it up because [57] as Your Honor point out, only four people in the world know about this, and lot of other judges — I feel very fortunate to be in front of a judge who does understand this because I've spent hours in front of other courts trying to explain the difference between subrogation and reimbursement.

THE COURT: Well, I had the good fortune to do some representation of bonding companies in bankruptcy in my prior life, not as much as you do, but enough.

MR. BRUNSTAD: But Your Honor, the point is, is that —

THE COURT: And I know about the *Pearlman* case too.

MR. BRUNSTAD: Yes. Which is a fabulous case. But the point, Your Honor, is that even though nothing in the Bankruptcy Code said or even arguably says they can eliminate our subrogation rights, they tried to do it anyway. And so we had to litigate that point, and we incurred legal fees accordingly.

THE COURT: I understand your point.

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THE COURT: Okay. Listen. I appreciate all the work and all the sophisticated legal theories. I'm going to resist the temptation to take the matter under advisement. I'm going to sustain the Debtor's objections, Mr. Brunstad, and I'll explain myself.

First of all, what I'm going to overrule the Debtor, is on any adequacy of the Proof of Claim. Indeed, your Proof of Claim was filed, but without as much data and documentation as maybe it might have been, but we're dealing with experienced counsel who know how to exchange information and so, just as if I were going to have an evidentiary hearing, I might give the Debtor more time to [76] deal with the specifics that only came more recently, I'm not going to fault Travelers for having this Proof of Claim sort of gradually grow into the five-pound document it is.

So the Debtor's points on that theory are rejected. I'm satisfied, having listened to the arguments and looked at the documents and my familiarity with the cases — I won't lie to you; I didn't go back and read *Security Mortgage* this morning. But I'm going to tell you how I deal with the *Security Mortgage* argument.

First of all, I do think Mr. Kaplan is correct that the challenges to the Travelers claim were in fact all Bankruptcy Code challenges. If he had filed an adversary proceeding to declare some or all of the indemnity agreements or the bonds or whatever invalid, and had gone for declaratory relief and certainly had sought that kind of relief, I might not come out the same way. But the legal theory of the Debtor's challenge to the claims is pure bankruptcy.

Now, I understand your point, Mr. Brunstad, of a concern that may be lurking between the lines somewhere with something more than the objection to claim. I just simply don't buy it. I recognize that maybe you and your client had no choice but to try to protect your position. But I don't think — and again, I don't fault you for that or fault Travelers for that, but I don't think that you can [77] sort of say, you know, we thought there was a thief hiding under the bed so we had to clear out under the bed. I don't think there was a risk there. This was an objection to claims. It wasn't more than that, and I don't believe under the traditional default rules, you could have done any worse than have had the claims disallowed. And so therefore, to the extent that you want me to accept the argument that that objection was more than what I'm going to call a pure bankruptcy 502 type challenge, I simply don't agree. And if you disagree with me, as I have no doubt you do, you'll have to convince some other judge to agree with you on that point.

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As far as the protecting — Travelers protecting its position by negotiating with the plan and the disclosure statement, of course, you had every right to do that. We're back to the same thing I said before; I just don't think the Debtor has to pay for it, because I think it's bankruptcy law.

So then I come to *Security Mortgage*, and of course, I can joke that we in the Ninth Circuit are — have our own rules here, but we do honor Supreme Court cases. I think *Security Mortgage* is distinguishable, but even if it isn't, I'm bound to follow Nine Circuit precedent, and you're going to have to convince the Ninth Circuit that it was wrong in all those other cases. And *Fobian* and *Renfrow* [78] and others, some of which I did simply refer to in that *Hassen Imports* case, they have made it clear to me, although I see it more often than not in a credit card dischargeability case that where liability is not an issue but dischargeability is, the creditor doesn't get his attorney's fees. Where liability is challenged and dischargeability is, the court has to sort it through. And I see no difference in other aspects of bankruptcy application, and I am not prepared to say that one little piece of concern about what was sought in the objection to claim implicated your client's State law rights such that you can now invoke the attorney's fees provision.

So I don't think *Security Mortgage* has been ignored by the several Ninth Circuit cases, but even if it has, I'm bound to follow Ninth Circuit authority, and I'm going to follow it. And I think that Mr. Kaplan's arguments are well taken here. So I don't need to get to the question, and I won't address the question, of whether the fees were reasonable in whole or in part. I simple agree with Mr. Kaplan that as a matter of bankruptcy law, they cannot be assessed against the Debtor in

any amount. So I will sustain the objections for those reasons. I will ask Mr. Kaplan to submit — he's already got it in his hand — submit a form of order that simply recites that the objections are sustained for the reasons stated on the [79] record.

MR. KAPLAN: Your Honor, may we approach with the proposed order?

THE COURT: Show it to counsel.

But, Mr. Brunstad, I do appreciate the very, very thorough legal analysis of the issues, and the fact that I may come out disagreeing with you doesn't mean I don't very much respect your analysis of the theories — or Mr. Kaplan's. And this is a stimulating and challenging area in a frankly obscure area of the law, as you know.

MR. BRUNSTAD: Yes, it is, Your Honor. I very much appreciate Your Honor's understanding of the area of the law, however; it makes things much easier. One —

THE COURT: Do you have any problem with the form of order?

MR. BRUNSTAD: I do not, Your Honor.

THE COURT: All right.

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